

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

362A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ,
Appellant,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS
INDUSTRIELLES ET COMMERCIALES, S. A. also known
as INTERNATIONALE INDUSTRIE UND HANDELSBE-
TEILIGUNGEN, A. G.,

Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

APPENDIX
Volume II

FILED DEC 15 1970

Nathan J. Paulson
CLERK

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A I saw him from time to time.

Q Will you tell us the times that you saw him after that meeting and what occurred?

A I don't recollect dates.

Q Can you approximate the times or the dates and where the meetings occurred and why they occurred, sir?

A The Zurich meeting, when he was in Zurich.

662

BY MR. STRICKLER:

Q Can you tell us when that was, approximately? Was that following the Paris meeting?

A Yes, following Paris. The meeting took place in my office.

Q Who was present?

A Nobody.

Q You and Mr. Schmitz?

A Yes.

Q What occurred at that meeting?

A Long talks about Interhandel and General Aniline, and once he brought me a great number of drafts for a newspaper article. He thought they may be useful in this connection and after I did read the same, I had to realize that they were of no use at all.

Q Did you meet Mr. Schmitz in New York on occasions after the Paris meeting?

A Yes, I did meet him.

Q What was your purpose of going to New York on those occasions?

A Was mainly to contact.

Q To contact Mr. Charles Wilson and Mr. Spofford?

663 Q Did you contact them on your trips to New York? Did you meet with them?

A I did meet with them in the respective offices.

Q Did there come a time when you commenced making payments on behalf of Union Bank or Interhandel to Robert A. Schmitz on a monthly basis?

A Yes.

Q Can you tell us the amount of the payments per month and in total?

A It was \$2,000 per month. I don't recollect for how many months the payments were made.

Q And did you make these payments at the direction of anyone connected with Interhandel, sir?

A That was on the direction of either Saager or Dr. Schaefer.

THE COURT: Did there come a time when you advised Mr. Schmitz the payments would cease.

THE WITNESS: Yes, I did so.

664 MR. STRICKLER: May I have a letter marked Defendant's Exhibit 12 for identification.

THE DEPUTY CLERK: Defendant's Exhibit 12 marked.

BY MR. STRICKLER:

Q I show you a document marked as Defendant's Exhibit 12 for identification, and ask you if you can identify that, Dr. Wehrli?

A Yes. That is a copy of a letter I wrote to Robert Schmitz.

THE COURT: What is the date of the letter?

MR. STRICKLER: It is dated December 19, 1961.

MR. O'DONOGHUE: No objection.

THE COURT: It will be received in evidence.

BY MR. STRICKLER:

Q Dr. Wehrli, did there come a time when you learned that Mr. Schmitz was making claim against Interhandel for a five percent commission or finders fee?

665 MR. O'DONOGHUE: I object to that. It would be hearsay I suppose the way the question is stated.

MR. STRICKLER: I think he could answer the question, Your Honor, as to whether he learned this and we could find

out the source of his information.

THE COURT: I will overrule the objection.

THE WITNESS: I learned it at the beginning of '62.

BY MR. STRICKLER:

Q Can you tell us how you learned of this claim, sir?

A I think Mr. Schmitz wrote to either Schaefer or Saager about this.

* * *

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BY MR. STRICKLER:

Q Dr. Wehrli, prior to receipt of this letter dated January 17, 1962, had the subject of five percent commission or finders fee been discussed between you and Mr. Schmitz?

A No.

* * *

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BY MR. STRICKLER:

Q Prior to receipt of this letter had you had any discussions with any person concerning a five percent commission or finders fee for Mr. Schmitz?

A No.

MR. STRICKLER: May I have this document marked as Defendant's Exhibit 14 for identification.

THE DEPUTY CLERK: Defendant's Exhibit 15 marked for identification.

* * *

BY MR. STRICKLER:

Q. Dr. Wehrli, I show you a document marked Defendant's Exhibit 14 for identification and ask you if you have seen that document, sir?

A. Yes.

Q. Will you tell us what it is?

A. It is a draft for payment for \$112,000.

Q. It's date?

A. February 27, 1962.

Q. Who is seeking the payment of \$112,000, sir?

A. Mr. Robert Schmitz.

* * *

BY MR. STRICKLER:

Q. Was the draft in order, Dr. Wehrli?

A. No.

MR. O'DONOGHUE: I have no objection.

* * *

MR. STRICKLER: We offer Defendant's Exhibit 14.

THE COURT: Exhibit 14 is received in evidence.

* * *

BY MR. STRICKLER:

Q. I show you document marked for identification as Defendant's Exhibit 15 and ask you if you can identify that, sir?

A Yes.

Q Tell us what it is, please.

A It is a letter sent by the Union Bank to receive reject payment of this draft.

672 Q Of \$112,000 draft?

A Yes, of this draft.

Q What was its date, do you recall, Dr. Wehrli?

A I don't recall from that.

MR. O'DONOGHUE: I have no objection.

THE COURT: What's the date?

MR. STRICKLER: Date is March 2nd, 1962.

THE COURT: Without objection it will be received in evidence.

* * *

BY MR. STRICKLER:

Q Directing your attention to the period of mid April 1962, did you have a conversation with Mr. Charles E. Wilson concerning compensation for Mr. Schmitz?

A Yes. I made a trip to the United States for that purpose.

Q Can you fix the date or the approximate date of that trip?

A It must have been end of April or beginning of May.

MR. STRICKLER: Mark for identification this docu-

ment as Defendant's Exhibit Number 16.

THE DEPUTY CLERK: Defendant's Exhibit 16 marked
673 for identification.

* * *

BY MR. STRICKLER:

Q I show you the document just identified, Dr. Wehrli,
and ask you if you have seen it before?

A Yes.

Q Will you tell us what it is?

A That is a report I made about a telephone call I
had from Mr. Charles Wilson on April 18, '62, after he first
tried to reach Mr. Saager over the phone.

MR. O'DONOGHUE: Wait a minute. Your Honor, let's
have it identified. I probably will object to the exhibit
and let's not read the contents.

BY MR. STRICKLER:

Q When was this report made in relation to the time
of the telephone call?

A I think immediately afterwards.

* * *

674 THE COURT: You are asking first can he do it. Do
you remember the substance of the conversation?

THE WITNESS: I don't remember the substance but I
saw that I put it immediately in writing. I dictated it to
my secretary.

BY MR. STRICKLER:

Q After you have reviewed the notice that you put in

writing, did it refresh your recollection as to the subject of the conversation with Mr. Charles E. Wilson?

MR. O'DONOGHUE: I am not sure I understand this question -- does it now refresh his recollection?

MR. STRICKLER: Yes. That's the question.

THE WITNESS: Yes. It does now refresh my recollection.

BY MR. STRICKLER:

Q Will you tell us the nature of the subject of the conversation with Mr. Wilson, please?

MR. O'DONOGHUE: That's what I object to, Your Honor. I don't think there is any room for that here. That would be hearsay.

* * *

676 THE COURT: You want to say anything further, Mr. Strickler? I sustain the objection.

* * *

676 BY MR. STRICKLER:

Q Following your conversation with Mr. Wilson, did there come a time when you discussed the matter of a settlement with Mr. Robert A. Schmitz?

A I made a trip to the states, as I mentioned, either the end of April or beginning of May of the same year.

Q Will you tell us what your mission was and what occurred between you and Mr. Robert A. Schmitz on that visit, sir?

A I met Mr. Schmitz and I also met Mr. Wilson and I think I met Mr. Wilson first. And then I made him an offer of \$20,000.

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THE COURT: Made who an offer of \$20,000?

THE WITNESS: To Mr. Schmitz, of \$20,000.

BY MR. STRICKLER:

Q What did Mr. Schmitz say in response to that, sir?

A He refused to accept it.

MR. STRICKLER: If you will indulge me one moment,
Your Honor. I may be nearly finished.

(Pause)

MR. STRICKLER: No further questions, Your Honor.

* * *

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CROSS-EXAMINATION

BY MR. O'DONOGHUE:

Q Dr. Wehrli, when did you first go with Union Bank?

A I don't recollect exactly, but I think it was about
'44 roughly.

Q And you stayed with them until '62?

A Until '62, yes.

Q During that time you worked your way up in the hierarchy of command?

A Yes.

Q By October of 1959, you said you were Assistant Manager?

A Assistant or Sub-Manager, I don't know what the translation is.

Q About where was that in the management structure?
Were you No. 3 or 2 or what?

A There is General Manager.

Q Schaefer?

A Schaefer, and his colleagues. Then there Manager and there is Assistant Manager and there is Sub-Manager, if you call it this way.

Q Well, Assistant Manager; then, is No. 3?

A Three, yes.

Q You stated that when you were in Paris at the end of 1960 you had a long talk with Mr. Spofford to fill him in on all the details of the past affairs and history of Interhandel and GAF, is that true?

A That is true.

Q So you were very familiar with the whole picture?

A Yes.

Q And were able to fill him in. Did you tell him something, then, of the ownership of Interhandel, how it was controlled?

A I don't remember details of this long talk.

Q It might have concerned things of that kind, might it not?

A It might have been.

Q In 1958 -- let's say at the beginning of 1968 what was the stock ownership of Interhandel? Do you know how many shares were outstanding or what kind?

A There were some, a hundred -- over a hundred thousand were outstanding in the public.

Q A few over a hundred thousand?

A I don't remember the exact figure, and a substantial lot was seized in the States.

Q That was included in the hundred thousand shares?

A No, that is not included in the hundred thousand shares. Roughly 160,000, I guess, was the figure, the total figure including the seized.

Q How many of them were publicly held?

A Over a hundred thousand.

Q Do you know how many shares Dr. Sturzenegger held at that time?

A No.

Q Did he ultimately sell them to Union Bank?

A He did sell.

Q When was that, in the summer of '59?

A I don't remember.

Q How many shares did Union Bank own at the beginning of 1958?

A I don't know.

Q Or at the end?

A I don't know either.

Q Was it a majority of the outstanding shares?

A No.

Q Was it a small fraction of the outstanding shares?

A The direct holding was rather a small fraction.

Q Was Dr. Sturzenegger, until he sold his shares in the summer of '59, the largest single individual stockholder by far?

A He was supposed to be.

Q Was what?

A Was supposed to be.

Q You know that was a fact?

A No, I didn't know the exact shareholding in Interhandel.

627 Q I am not talking about the exact shareholding, I am saying it was known to you he was far and away the largest individual shareholder of Interhandel stock, isn't that correct?

A Yes.

Q Who acquired the stock when he sold it to Union Bank?

A Union Bank bought it.

Q Bought all of his stock?

A Union Bank bought 10,000.

Q What did they do with it, hold it?

A What?

Q Did they hold it, keep it?

A They mostly sold it to clients.

Q So that even after they bought Dr. Sturzenegger's shares, they sold most of it and had only a very small portion

left later on, is that it?

A Yes.

* * *

688 BY MR. O'DONOGHUE:

Q Until Dr. Schaefer ---

A Dr. Sturzenegger.

Q --- Dr. Sturzenegger sold 10,000 shares of Interhandel to Union Bank in the summer of '59, he was the largest single stockholder?

A He was the largest single stockholder, but I don't remember when he sold it.

Q Would it have been approximately sometime in '59?

A It could be, but it is not in my recollection.

Q All right. Coming to October of 1959, that is the first time you had ever met Mr. Robert Schmitz, is that correct?

A That is correct.

Q Had you met his father before that time?

A Never.

Q When did you first become familiar with the affairs of Interhandel and GAF?

A In '48, I guess.

Q In what capacity at that time?

A At that time Remington-Rand was attempting to get an

option on GAF through Union Bank.

Q Did you handle that transaction?

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A I was very much involved in this transaction.

Q Union Bank was acting as an agent for Remington-Rand, is that it?

A As agent.

Q And you learned a lot about its affairs at that time?

A That is true.

Q How did you happen to meet Mr. Schmitz in October of '59? How did you happen to meet him?

A He came to see Dr. Schaefer and then I was introduced.

Q Well, before he had seen Dr. Schaefer, you don't know who else he may have seen?

A No.

Q You don't know whether he saw Mr. Saager or Dr. Frey?

A No.

Q And it was Dr. Schaefer who introduced you, is that correct?

A I think so.

Q Would that have been approximately October 23, 1959?

A I have no precise recollection.

Q Did you have a conversation with Mr. Schmitz at that time?

A I had a lengthy conversation.

Q Alone?

A Most alone.

690 Q What was the subject matter of that conversation or conversations?

A It was in general terms, Mr. Schmitz told me his conviction that GAF should be returned to the Swiss.

Q Well, that wasn't anything new to you, was it? You thought that?

A It wasn't new to me.

Q Did he suggest any method by which that desired result could be obtained?

A He told me that in his view it should be resolved by an independent personality in the USA who had a good reputation on all sides.

Q Did he suggest who that personality might be?

A Not at the beginning.

Q Not at the beginning. Did he at the end?

A He told me later.

Q What do you mean by "later," in that same conversation?

A I don't remember, or whether it was only at the occasion of a later conversation.

Q It might have been at a later conversation?

A It might have been at a later conversation.

Q But on that same visit of Mr. Schmitz to Zürich or some later visit?

A I don't recollect.

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Q Did that appeal to you as a good idea?

A It seems to me a reasonable idea.

Q Was anything then agreed as to what he should do about it?

A No.

Q Nothing?

A Not with me.

Q Not with you. I see. And that was all that was covered in this long conversation?

A Yes.

Q Just telling you that he thought it should be returned to the Swiss and that somebody in the U. S. might be able to do that?

A Yes.

Q And that took several hours to say?

A Yes.

Q What did you say in that conversation, do you remember?

A I listened.

Q Mr. Schmitz, as far as you know, then left and went

back to New York, is that true?

A Yes.

Q You then, at some -- you then went to New York, did you not?

A Yes.

692 Q Do you remember when that was?

A No.

Q Would it have been approximately the end of January or early February of 1960?

A Might be, yes.

Q When you got there, you telephoned Mr. Schmitz?

A I contacted him.

Q When I say "telephoned," why do you say you contacted -- you mean you didn't telephone?

A I mean I wrote him that I came over. Whether I telephoned him that I am there, I don't know.

Q Were you instructed to go to the United States?

A Yes, I was instructed.

Q For what purpose?

A To meet now this person he was suggesting who was Mr. Charles Wilson.

Q Was that a meeting arranged by Mr. Schmitz?

A Yes.

Q Did you tell him that the people at Interhandel,

including particularly Dr. Schaefer, were anxious for Mr. Wilson to come to Paris to meet them?

A I think a meeting was discussed.

Q Were the terms of Mr. Wilson's commission discussed?

A There were no commissions discussed.

Q Well, I don't mean it in that sense.

093 MR. WILSON: Is this a conversation between Mr. Wilson and the witness?

MR. O'DONOGHUE: Between Mr. Wilson, the witness and ---

THE COURT: I understood it was between Mr. Schmitz and the witness.

MR. O'DONOGHUE: I asked him if a meeting was arranged with Mr. Wilson, and it was arranged and Mr. Schmitz and Mr. Wilson were present, is that correct?

THE WITNESS: I don't know whether all the time Mr. Schmitz was present or not.

BY MR. O'DONOGHUE:

Q You had some meetings with him apart from Mr. Wilson, too?

A I had meetings with Mr. Schmitz apart from Mr. Wilson and I had through the years meetings with Mr. Wilson apart from Mr. Schmitz.

Q How long were you there on that occasion?

A I don't know.

Q Was it a matter of several days?

A Maybe four or five days, I don't recollect.

Q Did you have other business in New York aside from this?

A Not particularly.

Q Were you trying to persuade Mr. Wilson to act on behalf of Interhandel?

594 A No, I was rather inquiring whether he had really the intention to do so.

MR. WILSON: Your Honor, would this come under your ruling that would have excluded Mr. Wehrli from describing the telephone conversation to Mr. Wilson?

THE COURT: I don't think so.

BY MR. O'DONOGHUE:

Q Did he say he would act for the Swiss?

A He showed interest in principle.

Q Showed an interest in principle, is that what you said?

A Yes.

Q But he didn't commit himself?

A No.

Q Did you tell him with Mr. Schmitz there that it was a very desirable thing from Interhandel's standpoint to obtain his services?

A I did not argue.

Q I am not talking about arguing. Did you tell him?

A My mission was more to listen than to convince.

THE COURT: When was this, Mr. O'Donoghue?

MR. O'DONOGHUE: The end of January and the first of February of 1960.

THE COURT: 1960.

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BY MR. O'DONOGHUE:

Q Well, who were you to listen to? Who sent you to listen to whom?

A Dr. Schaefer and Mr. Saager sent me to New York.

Q You had no word from New York that anybody there wanted to talk to you, did you?

A I don't understand this.

Q Well, I am asking you what prompted this visit of yours. It was entirely at the instigation of the Interhandel people? Dr. Schaefer sent you, didn't he?

A That is true.

Q You weren't requested to come by anybody in New York?

A What?

Q You were not requested to come by anybody in New York, were you?

A I think also Robert Schmitz suggested to come.

Q Do you have any letter from him that says that?

A I don't recollect.

Q Did he telephone you?

A It is possible.

Q Possible. Isn't it a fact that you turned up in New York and gave him a call and said you wanted to meet Mr. Wilson and that there hadn't been anything prior to that?

A No doubt I had calls with him in New York.

Q Yes, I know, but that he didn't summon you nor did Mr. Wilson summon you, but you were sent entirely at the instance of your employer?

A I say I don't know whether there were phonecalls before my trip, and to fix a date for the trip -- make sure that Mr. Wilson is present.

Q There were four or five days of conferences, weren't there?

A Might be.

Q Might be?

A I don't know, I don't recollect.

Q And you have no further recollection of the conversations?

A No.

Q Was there any talk about a Paris meeting?

A I said it was -- the conversation was that a meeting with the main officials like Dr. Schaefer and Mr. Saager are

requested, are necessary.

Q What response did you get to that?

A That such a meeting could take place in Europe.

Q When did you next see Mr. Schmitz after that?

A I think he came to Zürich early spring.

Q Later in February of that year?

A Early spring somewhere.

Q And do you remember this meeting with him in Zürich; if I suggest that it was February 22nd, 1960, would you deny that that is the correct date?

A I don't recollect the date. There are thousands of dates through the years.

Q Thousands of dates in dealings with Mr. Schmitz?

A No, through the years. There are thousands of days through the years and I don't recollect each date what I am doing something.

Q And there were also many, many meetings and contacts with Mr. Schmitz?

A Not many, not many.

Q Well, how many were there?

A I would say six to seven.

Q Well, let's see. You had met with him twice already when he came to Zürich in February?

A Yes.

Q Of 1966. Do you remember meeting with him about the -- working with him about drafts of certain papers at that time?

A That is true.

Q For how long a period did that continue?

A He brought a draft, I think it was handwritten, and I had it typed by my secretary.

Q Were those drafts acceptable as written by him?

A I thought they were very lengthy and I thought I would have done the same thing in one page what was drafted in six to ten pages.

Q Did you attempt to condense them into one page?

A No, because I was familiar that in USA many documents are extremely long where we make -- and especially myself -- concentrate on the main points.

Q I see. You come to the point much better than we do, is that it?

A I guess.

Q These drafts -- what were they drafts of?

A They were drafts of a power, and they were drafts of a minute of a resolution of a board, the Board of Interhandel.

Q You considered them satisfactory as resolutions that Interhandel would enact for that purpose?

A I say I considered it very lengthy, but I thought they do no harm in its length.

Q Everything in it represented fairly the views and the attitude of Interhandel, did it not?

A Not in my taste, because it was too long.

Q I am not talking about the length. I am talking about the contents. Was there anything in the contents that you as counsel for Interhandel objected to as not representing the actual intentions of Interhandel?

A No, there was no point I rejected.

Q No point you rejected.

Do you remember that Mr. Schmitz was in Zürich and had conferences with you from February 22, 1960, to February 29, 1960, since it was leap year?

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A Pardon -- since?

Q There was a February 29th in 1960?

A Yes.

Q Do you remember there were conferences with him through that date?

A It is possible.

Q And that you had numerous discussions with him?

A I used to have numerous talks with him during his visits to Switzerland every time when he was there.

Q Did you meet with him everyday during this period?

A That I don't recollect.

Q Do you remember taking him to the Zürich Golf Club?

A Not in February because in February it is closed.

Q So you deny that you took him there?

A Yes.

Q Where did you take him?

A I don't recollect, but once -- but I think he was once in my apartment.

Q In your what?

A In my apartment through one of his visits.

Q Was he instructed to do anything with these -- wait a minute.

MR. O'DONOGHUE: May I have Plaintiff's 34 and 35?

BY MR. O'DONOGHUE:

Q Dr. Wehrli, I show you Plaintiff's Exhibits 34 and 35, and ask you if those are the drafts, so-called Draft A and Draft B, that were drawn up at that time?

A (Looks through documents.) Yes, they are some of those drafts.

Q Was there any other paper drawn up at that time, any kind of memorandum of your conversations that you know of?

A I don't recollect.

Q After those were drawn up, what was the understanding, what did you tell Mr. Schmitz to do with them, if you told him anything?

A There were some of these lengthy drafts with very

precise texts, so I did not pay very much attention.

Q Were you counsel for the Union Bank?

A No.

Q You are a lawyer, but you didn't advise them on legal matters?

A I was helping them handling the Interhandel matter because of my long experience I had since '48.

Q Was any other counsel called in to discuss these drafts?

A I don't think so.

Q So the sole responsibility to advise Interhandel on their legal validity, et cetera, was your responsibility, is that it?

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A Not exactly my responsibility. I posed things to the other gentlemen, like Dr. Schaefer and Bruno Saager.

Q This was a pretty important thing for Union Bank, wasn't it, and Interhandel?

A That is true.

Q And you had to satisfy yourself very particularly that any resolutions passed by the Board would be entirely acceptable in every respect, did you not?

A Yes, but together with the other gentlemen.

Q You didn't pay much attention to this?

A No -- not to the resolution.

Q I beg your pardon?

A I say to this draft here.

Q I thought you said you didn't pay very much attention to ---

A To these two drafts (indicating).

Q It was later on that you considered things more carefully, is that it?

A That is true.

Q Is it true at this time Union Bank was extremely anxious to obtain the services of Mr. Charles E. Wilson?

A "Extremely anxious" is perhaps not the proper word.

Q Let's get another adverb. They were anxious?

A Right.

Q But not extremely?

A I don't think so.

Q "Very," is that too strong?

A Rather too strong.

Q You have no adverb that you could suggest then?

A They were hopeful that this will help in the matter.

Q They were hopeful and because of this hope, they were anxious to have him accept this arrangement?

A Yes.

Q Was Mr. Schmitz instructed, if you know, to return to New York with his drafts and talk with Mr. Charles Wilson about them?

A Mr. Schmitz did it on his own initiative, that -- the drafts were handed to him.

Q What was he expected to do with them as far as Interhandel was concerned?

A He was expected to show them to Mr. Wilson.

Q Then he was instructed to show them to Mr. Wilson, wasn't it he you mean on his own initiative?

A Because he came and said these drafts should be drafted and this is a paper, Mr. Wilson would like to have, and so it was put in typewriting and looked through and handed over to Mr. Schmitz to bring it to Mr. Wilson.

Q So he was told to take them back to Mr. Wilson?

A He was told.

Q And as far as you know, he did?

A He did.

Q Did you have occasion to come again to New York in the spring of 1960 prior to the Paris meeting?

A I don't recollect.

MR. O'DONOGHUE: May I have Plaintiff's 41 please?

BY MR. O'DONOGHUE:

Q Dr. Wehrli, I show you Plaintiff's Exhibit 41 and ask if this refreshes your recollection of any subsequent visit to New York?

A Yes, that is true.

Q Now, your recollection is refreshed. Tell us about it.

A The letter speaks for itself. The purpose of the trip will be to decide other matters to discuss all problems of the matter, you know, and particularly also to discuss with you and perhaps your friends the memorandum you kindly prepared, which seems to be advisable before a meeting takes place in Paris.

Q So, who were the "friends" referred to?

A That is Mr. Wilson, Mr. Charles Wilson.

Q When did you arrive in New York then?

A I don't know, but I think the letter says.

Q I show you the Plaintiff's Exhibit 40 and ask you if that was sent by you or whom?

704 A I think that was sent by the bank. Otherwise, I shouldn't mention "doctor" in connection with my name.

Q It was sent to explain that you were coming and that you would be at the St. Regis?

A Yes.

Q And that you would get in touch with Mr. Schmitz immediately upon arrival, is that correct?

A That's right.

Q Is that what you did?

A Yes.

Q Do you remember how long you stayed in New York on

that occasion?

A No.

Q You do not?

A No.

Q Would it have been a matter of several days?

A Not many.

Q Not many. Would it have been as long as from March 25 to April 7 of 1960?

A The whole stay might have been.

Q The whole stay?

A Might be.

Q Might be. Do you remember meeting with Mr. Wilson together with Mr. Schmitz on the occasion of your visit?

A No doubt we had meetings together.

Q But you don't remember anything about them?

A No particular.

Q I beg your pardon?

A No, no details.

Q Perhaps I can refresh your recollection.

A Yes.

Q Do you remember meeting Mr. Brupbacher there?

A I think I dropped into Mr. Brupbacher at the hotel or in front of the hotel.

Q It was an accidental meeting?

A. Yes.

Q Did you tell him why you were there?

A I don't think so.

Q Who was Dr. Brupbacher?

A He was a shareholder of Interhandel.

Q Fairly large shareholder?

A He was representing quite some substantial shareholdings -- whether he was himself, I don't know.

Q You mean he was a trustee?

A As a banker.

Q He was a banker, was he?

A He was a banker.

Q Is it true that -- you didn't want Mr. Brupbacher to know why you were in New York?

A I think so.

706 Q As a matter of fact, this whole matter from October through the end of May was conducted in the greatest secrecy, wasn't it?

A Yes.

Q You didn't want any of the other shareholders of Interhandel to know about what was going on?

A It was particularly Mr. Schmitz who insisted that it was dealt with very secretly.

Q Well, didn't Interhandel go along with that theory?

A We had no reason not to go along.

Q You didn't want to make it public, did you?

A That is true.

Q And as a matter of fact, you didn't even -- you kept it secret from Mr. John Wilson until after the -- after Mr. Charles Wilson accepted as trustee at the end of May, did you not?

A I think so.

Q Then there was a considerable flurry about who was going to tell Mr. John Wilson, isn't that true?

A What you mean by "flurry"?

Q I mean there was quite a bit of discussion and messages back and forth as to who was to let him know that?

A It might be. I don't recollect.

Q Do you remember going to lunch on the day of or day after your arrival with Mr. Schmitz -- to lunch at the Hotel Gotham?

707

A I don't remember.

Q You don't deny it?

A I don't know where I had all my lunches through the years.

Q Well, you have on occasion eaten there, have you?

A I don't know.

Q What was the purpose of coming to New York on this

occasion?

A It is what is mentioned in this letter, to prepare this meeting in Paris.

Q What preparations did you make in your two weeks or so in the States?

A I talked several times with Mr. Wilson. I also met, I guess, several times, Mr. Schmitz.

Q Did you meet with them usually together?

A I don't recollect exactly because I know sometimes through the years we meet together and sometimes we didn't meet together.

Q Mr. Wilson had not up to this time indicated that he would accept the trusteeship, had he?

A But he accepted willingness ---

Q To consider?

A To consider.

703 Q At this time or earlier, did Mr. Schmitz tell you about any of his past relationships with Interhandel and GAR?

A No.

Q Did he ever tell you about his attempts to obtain an arrangement whereby some American corporation would buy the shares of GAR from Interhandel?

A No.

Q He never told you anything about that?

A I think the only thing he mentioned once, that when I told about my experience with Remington-Rand years ago, that he was somewhat connected then with Remington-Rand.

Q Did he ever tell you what financial arrangements he had with these other companies?

A No.

Q Did you have the impression he was working for a substantial fee from any of these companies?

A No.

Q Were any of these discussions related to the Satisfying Mr. Wilson of the bona fides of Interhandel's claim for the return of GAF stock?

A I am trying to get your question.

Q I will rephrase it.

Were any of these conversations with Mr. Wilson for the purpose of satisfying him or telling him that there was no enemy taint to Interhandel, that it was not German-controlled

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A There was no special argument about it.

Q Was he concerned with that?

A He didn't look concerned about it.

Q I am just trying to find out as much as I can about what happened, what was discussed in all these many meetings you had over a period of about two weeks in New York. Why did you stay two weeks?

A I think I left New York for a few days.

Q Where did you go?

A I go to meet friends who lived near Boston.

Q Was that partly done in order to avoid a meeting with John Wilson?

A No, it was done to avoid a meeting with a certain Mr. Floersheim, who was insisting to meet me.

Q Well, you could have gone back to Zürich and avoided that, couldn't you?

A Yes, but I had in mind -- I had planned another meeting, I think, with Mr. Charles Wilson, and so I went to Boston because I didn't want to offend this Mr. Floersheim, who was in good relations with Mr. Saager.

Q Did you tell Mr. Schmitz that a Mr. Alvord, representing General Dynamics, was anxious to see you, but that you wanted to avoid him?

A I think I told him that he is anxious to see me, but I was not avoiding to meet with Mr. Alvord.

Q Did you meet Mr. Alvord when you were in New York on this trip?

A I don't know whether I met him on this trip or whether I met him on later trips.

Q Was there any discussion with Mr. Schmitz and Mr. Wilson of a proposal by Sutro Brothers?

A Sutro Brothers is this matter of Floersheim.

Q Well, what was that matter?

A Floersheim, I think, was the main partner of Sutro Brothers.

Q And you wanted to avoid him?

A I didn't want to talk with two people at the same time, one Mr. Charles Wilson and the other, Mr. Floersheim.

Q Well, isn't it a fact that Interhandel had determined to proceed, if possible, with Mr. Charles Wilson's services and to avoid any other possible settlements of this matter, is that true?

A They favored contact with Mr. Charles Wilson, and I gave no chance to this discussion -- or this initiative of Mr. Floersheim.

Q Did you go to Mr. Schmitz during this visit?

A On the way to Boston I stopped at his place and he drove me around. I think he showed me his house and the place he lives and I think he also showed me a hospital where his wife or relatives of his were helping. And then I proceeded further to Boston.

Q I suppose you would tell us that there was no discussion of Mr. Schmitz's finder's fee at this time?

A I never had any discussion about proposed finder's fees.

Q Did you have the impression Mr. Schmitz was working for nothing?

A No. He was paid ---

Q At this time I am talking about?

A At this time he said that this is a matter of principle for him, and at the same time to prove that his father was right.

Q That is, his father was right in what respect?

A In protecting -- in acting for GAF.

Q Protecting whom?

A Protecting Swiss interests.

Q Well, you have no doubt that his father had acted throughout to protect Swiss interests, had you?

A I never met his father.

Q But you knew about him and who he was?

A I knew who he was.

Q And you had no doubt that he had acted to protect the Swiss interests throughout, had you?

A I had no opinion of my own.

712 Q Was there anyone that said that he hadn't done so? To you?

A It was never discussed.

Q Well now, did you ask Mr. Schmitz what he meant by having to prove that his father was right?

A He told me about all the troubles his father had.

Q Well, you did learn all the troubles his father had ---

A --- from Mr. Schmitz ---

Q --- in representing his Swiss principals, isn't that true?

A That is what he told me, yes.

Q And you had no reason to doubt that this was true, did you?

A No reason.

Q It conformed with the information you had from other sources about the history of Interhandel and GAF, did it not?

A But I had no information about the activity in the States before ---

Q And then you found out about it. In other words, you say that as far as you are concerned, Mr. Schmitz was working for Interhandel for no compensation whatever during this period, is that it?

A That is true.

Q And you thought he was not interested in any compensation?

713 A He was so much stressing on these principles that I had the impression that this is his main object.

Q And did you get the impression that he had any other objects such as compensation at this time?

A No.

Q As a matter of fact, Mr. Schmitz was never paid a phennig for anything he did for the Swiss up until the first of June 1960, was he?

A I didn't know what he was doing before we met.

Q You certainly knew what he was doing after you met, didn't you?

A I did know what he was doing between October '59 and we are now on spring '60.

Q In this trip to New York in the end of March and first part of April 1960, was your mission to listen that time, too?

A Yes.

Q And you didn't do any talking yourself?

A I didn't close the mouth all the time, but I had no statements to make, no commitments to go into.

Q Isn't it true you were over here trying your level best to obtain the services of Mr. Charles E. Wilson?

A Yes, to create an atmosphere of confidence, mutual confidence.

Q Beg pardon?

A To create an atmosphere of mutual confidence.

Q Did you think you could do that best by listening and not talking?

A I did talk with Mr. Wilson.

Q You talked a good deal, didn't you?

A Yes.

Q And you tried to persuade him to act?

A No, I didn't try to persuade.

Q What did you try to do?

A We talked about the problems.

Q What were the problems you talked about?

A How this trustee should operate, and what the procedure should be.

Q To the extent they were spelled out in Drafts A and B, you said those were acceptable to Interhandel, did you not?

A I said this power that was granted and the minutes of the Board of Directors ---

Q The Board had not acted on the resolution at this time, had it?

A I don't know the date when the Board was ---

Q You may not, but it was subsequent to your visit to New York in this period, was it not?

A Yes, I think so.

Q Well now, you were talking to Mr. Wilson and Mr. Schmitz was often there about how the trusteeship was to operate, was it not?

A Yes.

Q Did you tell him that it would be an irrevocable trusteeship?

A That was in the draft.

Q You said that that is what it meant, didn't you?

A No, I didn't discuss that with him.

Q Well, I am trying to find out what you did discuss. You said you discussed the problems and how it would operate, what did you discuss about how it would operate?

A Mr. Wilson told me about his connections he had, people he knew in Washington and the possibilities of his contacting -- those were the main ---

Q There was no discussion about what his authority would be?

A It was a power.

Q Full power to do anything he saw fit, was that it?

A Yes, but it was at the same time, I understood, and I think later expressly said.

Q Who?

A Later expressly said.

Q I am talking about at this time.

A I don't know, but you interrupted me. I said I later expressly said that Mr. Wilson ---

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Q I did interrupt because I am asking you at this particular time what the discussion were. I am not interested at the moment what these later discussions may have been. No

will come to them later on.

A I see.

Q Did Mr. Wilson say that he wanted very broad powers?

A We had already the draft and I considered this as his wish.

Q I see. So that the draft actually expressed the entire agreement, is that correct?

A The draft was the agreement meant to be made.

Q And you didn't discuss any modifications of this agreement?

A Of this agreement, no.

Q After spending a couple of weeks on these conferences which you -- and is that the full extent of your recollection of the conferences in New York and thereabouts, the end of March and first of April?

A Yes.

Q Nothing else has occurred to you that might have occurred?

A Nothing else occurred to me that did strike me.

MR. O'DONOGHUE: May I have Plaintiff's 43 and 44 please? That's right.

711 BY MR. O'DONOGHUE:

Q Now, Dr. Wehrli, I show you Plaintiff's Exhibit 43 and ask you if you remember that?

A (Witness reads through document.) Yes.

Q Would you read it since it is very short?

A It is a cable to Robert Schmitz, reading: "Deeply disappointed of recent events here which I learned today from newspapers. Wehrli."

Q What does that refer to?

A That refers to, I think, a brokerage group that came to Zürich during my absence and later made newspaper statements about talks they pretended to have had in Zürich.

Q Why did you send that telegram to Mr. Schmitz?

A Because I considered this newspaper statement as incorrect.

Q Why was it important that he know that you thought it was incorrect?

A Because these newspaper statements were in contradiction with what we talked and what I talked with Mr. Wilson in New York.

Q In what respect?

A That was a group pretending -- I don't know exactly any more what they were pretending, but they were pretending some action in the Interhandel matter.

Q What I am trying to find out, why you thought it was so important to notify Mr. Robert Schmitz by cable of that.

A That he is immediately informed that this is not in accordance.

Q Yes, but what business was that of his?

A Because I usually contacted through him with Mr. Wilson, Charles Wilson.

Q In other words, is it correct for me to say that Charles Wilson no doubt would have read the same thing in the newspapers about the so-called Green group, is that the name? It was trying to buy GAF shares or something from Interhandel?

A I don't remember exactly what it was, but --

Q But something about it?

A But Green is correct.

Q And you wanted him to know that that was not the case?

A That there is nothing in it.

Q Well now, how does that cable inform him that there is nothing, no truth in newspaper articles?

A It was said that -- it has said I am not approving that.

Q Beg your pardon?

A That I am not approving what is in the newspaper.

Q You say you were disappointed to read it in the newspaper?

THE COURT: I understood him to say he was not approving

719 that ---

THE WITNESS: Not approving.

BY MR. O'DONOGHUE:

Q But the telegram says you were disappointed?

A Disappointed, yes.

Q Was this telegram a part of some other communications between you and Mr. Schmitz at this time?

A I had many communications throughout the months.

Q Through the months, this period -- by telephone?

A Not right at this part, but I had many, through this year, -- year and a half I had many telegrams, letters sent to him and received from him.

Q I see. But what I am trying to find out is, what contemporaneous communications were there between you and him which would have made sense of this telegram?

A. I thought, now I recollect. One should not even receive these Green people because very often these brokers drop in, talk about things and then make up some statements, which are not in general correct, and to avoid that. It had been better not to receive these people at all.

But in banking business it is actually sometime people just -- you cannot say "step out."

Q Oh, I see. The newspaper article said you had received the Green group?

A Not me, that they had been received.

Q By Dr. Schaefer?

A I don't know by whom, I don't remember by whom, but they had been received in Zürich.

Q And the fact is that they were received, isn't that so?

A I think so and I thought it had been better just to say, "There is the door."

Q Excuse me, if you haven't finished.

A Yes.

Q Was the purpose then to get Mr. Schmitz to advise Mr. Charles E. Wilson that you weren't dealing with anybody else at this time?

A No.

Q And that you were anxious, still anxious, to have his services ---

A Yes.

Q --- and that he was not to get the idea that he should refuse because you were dealing with other people, is that the idea?

A That is true.

Q Of course, Mr. Schmitz was your intermediary this whole time with Mr. Wilson, was he not?

A His was a kind of intermediary or letter box.

Q Why did you need a letter box?

A Mr. Wilson had a postal address. You could have sent

721 something directly to him, could you not?

A I could also.

Q Why didn't you?

A I was on good terms with Mr. Schmitz and kept him informed.

Q You kept him informed?

A I wanted to keep him informed of that procedure.

Q You wanted him to take some action on this, did you not?

A Sure, that he is telling Mr. Wilson, giving this cable to Mr. Wilson.

Q I show you Plaintiff's Exhibit 44 and ask you if you received these telegrams in reply to your telegram of -- whatever, April 14.

I know they are hard to read. Can you read them?

A I can read it, but I cannot make out much of it.

Q You mean you don't understand what he is talking about?

A Not really.

Q Did you at the time you received it?

A If it is sent, I have received it, but I don't remember.

Q Oh, you don't remember having received it?

A And there is something to a Gubelin Shop ready and if I think he wants me to take care of a watch of his.

Q Wasn't that a code arrangement you had to indicate

the willingness on Mr. Wilson's part to come to Paris?

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A Gubelin is a watch-maker, jeweler, and I think I was taking something with me to have repaired.

Q Was it your understanding that when he sent such a telegram that they were willing to come to Paris?

A Not this telegram.

Q You didn't so understand it? Do you remember when you next saw Mr. Schmitz?

A I think it was either before the Paris meeting or at the Paris meeting.

Q You don't remember that he came to Zürich on April 21st, which was prior to the Paris meeting?

A It might be he came. When was this cable dated?

Q Your cable was ---

A No, this Gubelin ---

Q April 14. They were all the same date, April 14. You say he may have come to Zürich sometime before going to Paris, but you don't remember?

A I don't remember.

Q You don't remember that he came there and stayed for about a week?

A No, I don't remember the time because I don't remember when he came.

Q Well now, you did say something about when the Drafts

A and B of resolution of the powers were prepared, you didn't give too close attention to them at the time that that was done, is that true?

723

A As to the resolution and to the powers, I gave attention.

Q But didn't you at the time the Draft A was prepared, you said you didn't pay too much attention?

A Not too much attention when the draft was typed.

Q But later on you did?

A Later on I did look through the text.

Q And that was when Mr. Schmitz came to Zurich on April 21, 1960, is that correct?

A That I don't know because, as I said before, I took the text of these drafts as texts Mr. Charles Wilson wanted to have.

Q What attention did you give to the drafts, then, in this period before they were enacted by the Board of Interhandel? Did you scrutinize them pretty closely at this stage, just before they were to be submitted to the Board?

A No. I say I did not scrutinize it word by word because, from the beginning I considered them to be too long, but as I have told, that this was the kind of text Mr. Wilson, a most honorable person, wanted to have, I thought in doubt, it should be all right.

Q Well now, let me ask you this. GAF was the principal asset of Interhandel, wasn't it?

A That is true.

724 Q So anything having to do with turning over authority to some individual about dealing with this principal investment was a matter of gravest importance to Interhandel, is that correct?

A That is true.

Q And any resolution assigning powers to some individual in the United States, giving him absolute power to negotiate, absolute power to deal with any companies for sale, and that power to be irrevocable was a matter of great interest to Interhandel, was it not?

A That is true.

Q And did that not call upon you to exercise the greatest care in assuring yourself and, in turn, being able to assure the officials of Interhandel that the proposed resolutions were in good order?

A It is just these few points which you mentioned, which were of real essential essence, and as it was meant to agree with Mr. Wilson, with Mr. Charles Wilson separately, that he will not proceed without prior contacting Dr. Schaefer, there was no reason for objection.

MR. O'DONOGHUE: May I have Plaintiff's 47 and 48?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 47 and ask you if you know what that is?

725

A That is the copy of an extract of the minutes of the Executive Committee of the Board of Interhandel.

Q When was that enacted?

A It is dated April 28th.

Q That is the date it was enacted. Do you know whether that differs in any respect, material or otherwise, from Draft A of the exhibit?

A I don't know.

Q You don't know?

A No.

Q Well, you certainly satisfied yourself at the time to see whether or not there were any changes, weren't there?

A Yes.

Q Didn't you, as a matter of fact, work with Mr. Robert Schmitz over the modification of the draft and putting these resolutions into final and acceptable form during his stay in Zürich from April 21 to 23?

A If there were any changes, I don't remember.

Q You have no change to suggest at all?

A I don't remember.

* * *

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Q You had no suggested changes to make? Do you remember working with him over these things in your office?

A Oh, yes, we did read through that.

Q You did more than read through, Didn't you modify it in some ways?

A You see, there are so many points of general policy and of rather vague expressions, so I showed it to Dr. Schaefer and very likely asked him whether such kind of document should be signed.

Q And it was signed?

A And it was signed.

Q Have you finished your answer?

A Yes.

Q Were the minutes of the Board of Interhandel kept in English?

A No. The usual minutes are kept in German.

Q German. Were these translated into German?

A No.

Q So they were enacted in English?

A I guess.

727

Q Is that the only instance that you know of where that ever was done?

A Pardon?

Q Was that the only instance where that ever was done

to your knowledge?

A What?

Q That a resolution was granted in English instead of in German?

A I don't know the resolutions of Interhandel, of the Board. I have never attended a Board meeting.

Q I show you Plaintiff's Exhibit 48 and ask you whether or not -- whether there were any changes in that final version from the Draft B?

A This I cannot tell either. I cannot recollect whether there were any changes made.

Q Did you scrutinize it pretty carefully at this time?

A Yes, this I did scrutinize more carefully than this one (indicating).

Q And worked over point by point with Mr. Robert Schmitz?

A Or by myself, I don't know.

Q Well, he was in Zurich all this time, this week of April 21 to 28, was he not?

A But usually thorough examination I make by myself without presence of a third party.

Q Or even a second party?

A A second party.

Q And after that close scrutiny, you were satisfied?

A I was satisfied with the same restriction as I said

before.

Q That it was unnecessarily wordy?

A Yes.

Q In short, -- go ahead.

A But the decision was not with me. The decision was with Dr. Schaefer.

Q In short, Mr. Schmitz, for Interhandel, prepared both the resolution and the powers that were enacted by the Board of Interhandel?

A Made the draft of both.

Q Did he make the final form of both?

A No, these were typed in Zürich.

Q I am not talking about the typing. Of course, they were typed in Zürich. I am talking about the composition, the subject -- the material contained in it. That was all his work, wasn't it?

A I cannot say whether there was much work between the draft and this final text unless I compare it word by word.

Q Well, if there is no difference, then it was entirely prepared by Robert Schmitz, is that correct?

MR. WILSON: That is an improper question. I object to it.

THE COURT: I will overrule the question.

* * *

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THE WITNESS: That is correct.

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BY MR. O'DONOGHUE:

Q Dr. Wehrli, I show you Plaintiff's Exhibit 46 and ask you if you recognize that.

* * *

THE WITNESS: (Witness read exhibit) I don't remember this.

BY MR. O'DONOGHUE:

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Q Do you remember whether or not during the meetings in Zurich in April of 1960 that at the luncheon with Mr. Schmitz and Mr. Saager, you suggested that Mr. Schmitz draw up such a Memorandum?

A I don't remember.

Q You think it's possible that it occurred?

A It's possible.

Q I suppose, then, you don't remember that Mr. Schmitz showed this to you or read it to you?

A No doubt when it was made he showed a copy to me.

Q Now, was there any discussion of a reply to Mr. Green, or the preparation of an answer to Mr. Green that was discussed by you with Mr. Schmitz during that visit?

A I read in this Memorandum that there were discussions, and it is possible that we had a discussion about this matter,

because it refers also to this cable I sent to him. It was discussed before.

Q It was discussed before, so it is likely that---

A That that conversation took place.

Q Did you participate in the preparation of a letter to Mr. Green?

A I don't think so.

Q How about a draft of the letter to Mr. Charles E. Wilson?

A That's more likely that I participated in that.

MR. O'DONOGHUE: May I see Exhibits 49 and 50?

795

Q I show you Plaintiff's Exhibit 49, which is a letter addressed to Mr. Charles E. Wilson, from Dr. Schaefer and ask if you participated in the preparation of that letter.

A (Reading exhibit.) There are some English words which I don't use, so I am doubtful whether I took an active part in this drafting.

Q Do you know whether Mr. Schmitz did?

A No.

Q You don't know?

A I don't know.

Q Dr. Wehrli, ultimately, you and Dr. Schaefer went to Paris toward the end of April, did you not?

A Yes.

Q Can you tell us the circumstances leading up to that trip?

A It was the intention to meet Mr. Wilson, Mr. Spofford and Mr. Schmitz.

Q Did you make the arrangements for the meeting?

A I helped make the arrangements, yes.

Q You said, you did?

A And I arrived first in Paris to look for locations and other things for the meeting.

Q Where was that meeting?

A I think in Parc Monceau, Monceau Palace Hotel.

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Q Royal Monceau?

A Royal Monceau. I haven't been there since.

Q You were the first to arrive and made arrangements for rooms for all the persons?

A Yes, I arrived through the night and then later Dr. Schaefer arrived by plane in the morning.

Q What period of time did the meeting occupy in Paris when all parties were present, that is, Charles E. Wilson, Charles M. Spofford, Dr. Schaefer, you and Mr. Schmitz?

A I would say, roughly, from half-past ten until about 3, 4 o'clock in the afternoon.

Q Were the discussions continued through the luncheon period?

A There was luncheon, more of a social kind.

Q And all those persons that I named were present?

A In a separate room.

Q At this meeting did you meet Mr. Spofford for the first time?

A I met him for the first time.

Q And as far as you know, was this the first time Dr. Schaefer met him and Mr. Charles E. Wilson?

A Yes.

Q Did you introduce him to Mr. Wilson?

797 A I don't know whether I did introduce or whether Mr. Schmitz did introduce---

Q Can you tell us what was discussed at this meeting?

A It was the policy to be followed in broad outlines, and the purpose of the meeting was to get personally acquainted between Dr. Schaefer, on one side, and Mr. Wilson and Mr. Spofford on the other side.

Q That was the purpose. What was discussed in this 5-hour, 6-hour period? Tell us as nearly as you can remember, what was said.

A I don't remember any detail of the discussion, but it was discussed in great--- this trusteeship, and Mr. Wilson told about his possibilities of contacting the White House and other high officials in Washington, and it was agreed

that this policy should be followed.

Q Did Mr. Wilson agree at that time to accept the Trusteeship?

A I had the impression that in principle, he did agree, but he reserved a certain period, perhaps two weeks, for final consideration.

Q Did Dr. Schaefer attempt at this meeting to explain the whole situation to Mr. Wilson?

A He was giving a picture, how he sees the whole position of Interhandle and G.A.F.

798 Q And how did he see it? What did he say in respect to how he saw the whole situation?

A He explained that this should be returned to the Swiss owner, and that the Swiss banks were going into this matter with the aim of cleaning up this problem.

Q Did he say that he wanted all the G.A.F. stock returned to Interhandel?

A Yes.

Q And he didn't want anything less than all of it returned?

A Yes.

Q Did he explain anything about the good faith of Interhandel as far as the possibility of any German control was concerned?

A. Sure. He also mentioned that.

Q What do you mean "he mentioned?" Did he go into any detail about it?

A I say, I don't know any word-by-word account of what happened.

Q I want you to tell us in as much detail as you can remember, all that was said at that meeting?

A I do not remember anything but the broad outlines that was talked, because it was a mixture of business and social talk.

799 Q We are not concerned with the social talk, but we are concerned with the business talk, and you don't remember any of the business talk?

A Don't remember any detail.

Q Well, do you remember any further outlines of what occurred?

A What do you mean by "outlines"?

Q You say you remember the broad outlines of what occurred. Did you not say that?

A No. As I just mentioned before, that the Swiss banks are going into this matter to have the Interhandel case straightened out, and to have the Swiss assets returned to Switzerland.

Q Did Dr. Schaefer say that as far as the Swiss were

concerned, it was really a matter of principle?

A Yes.

Q Did he say that he was primarily interested in the money involved?

A I don't think that he was stressing the word "money," in this connection.

Q He was stressing the word "principle"?

A Principle.

Q Was any suggestion made, then, as to how long the matter would take for Mr. Charles Wilson to bring it to a conclusion?

800 A There was no definite period mentioned, but the impression was created, and I was under the impression that it was a matter of months.

Q Was any term put on the agreement as to Mr. Wilson's powers?

A No, but it was said that this agreement should be reviewed after a certain period, which was not, in my memory, defined precisely.

Q Was there any discussion about any authority of Interhandel to revoke these powers?

A It was said that this power, especially the part of selling, would not be exercised without prior contacting the Board of Interhandel.

Q The one thing -- the one limitation that was suggested be put on these powers was an agreement by Mr. Wilson that before he actually sold the stock to anyone, he would confer with the Interhandel officers, is that it?

A I wouldn't say so.

Q You would not. Wasn't that---

A I would not, because it was not meant this power was lost forever, without any limitation in time if nothing is reached.

MR. O'DONOGHUE: Mark that for identification, please?

THE CLERK: Plaintiff's Exhibit 132 marked for identification.

(Plaintiff's Ex. 132 marked.)

801

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 132 for identification, and ask you if you have seen this letter, perhaps the original of it before?

A Yes, I have seen this letter.

Q What is that letter, Dr. Wehrli? Did you draft it, let me ask?

A I don't know who drafted it, but I know it was discussed and was meant to be a limitation in the main respect, with regard to the power.

Q And that was the only written document that was

prepared at that time in any way to limit or interpret the powers?

A There is in our law---

Q Is there any other document drafted at that time to limit the powers is what I am asking you.

A There was no document at that time.

Q No other document.

MR. O'DONOGHUE: I offer this, your Honor.

MR. STRICKLER: No objection, your Honor.

THE COURT: Without objection, it will be received into evidence.

(Plaintiff's Ex. No. 132 received.)

302

Q Does that exhaust your recollection of this prolonged meeting, Dr. Wehrli, what you have told us?

A Yes, besides some social gathering.

Q Social what?

A Social meetings we had in the evening.

Q Did Dr. Schaefer say anything at that meeting in praise of Robert Schmitz?

A No.

Q He did not say anything in praise of him?

A No.

Q Did he say anything derogatory about him?

A Pardon?

Q Did he say anything critical of him?

A No.

Q Was any discussion of Robert Schmitz undertaken?

A No, because he left early.

Q Who left early?

A Dr. Schaefer.

Q I'm talking about while Dr. Schaefer was there.

A What?

Q While Dr. Schaefer was there.

A No, no, he did not say anything to me.

Q Did he say anything to Mr. Wilson when you were there about dealing through Robert Schmitz?

A No, that I attended.

Q Was there any discussion of how the mechanization of communication in dealing with Mr. Wilson was to be carried on from that time forward?

A Yes. It was meant that Mr. Schmitz keeps on as a kind of help, of liaison. How you say verbindungsman, in German.

Q What is that, a contact man?

A Contact man.

Q And it was understood that he was to continue on?

A Pardon.

Q It was understood that he was to continue on?

A To continue in this capacity.

Q Was there any discussion held in your presence about his compensation at this time?

A No.

Q Nothing at all?

A No, nothing.

Q Later on, you said that after Dr. Schaefer had left, you did have some discussion with Mr. Schmitz about some compensation, is that true?

A He told me that he had a conversation with Dr. Schaefer about compensation.

Q What did he say that that conversation consisted of?

A It was a rather confusing report he made.

804

Q I'm talking about compensation.

A I couldn't really make out what he was talking of with him, with Dr. Schaefer.

Q Was the general effect that Dr. Schaefer had promised him something?

A That is the point I couldn't make clear, out of his report.

Q Did you ask him any questions to try and clarify it?

A I asked him if he feels that this was not just a general exchange of ideas he had with Dr. Schaefer, but that

if he feels to have some agreement, he should put that in writing, and send it to me.

Q You don't know what the agreement was, then?

A No.

Q I see. Was there any discussion about compensating him in the future?

A No.

Q Was there any discussion about paying any of his expenses?

A That was.

Q What was that discussion?

A He sent certain bills for expenses.

805 Q I'm talking about discussion at Paris. Was there discussion?

A No.

Q No discussion of that?

A Don't remember.

Q Was there any discussion of compensation for Mr. Charles Wilson at that time?

A No, not in my presence.

Q Not in your presence. Did you know that Mr. Wilson had said he was not going to charge anything for the work he did?

A I heard about that.

Q But he didn't tell you that?

A No.

Q You, then, can't tell us at all what Mr. Schmitz said Dr. Schaefer had promised him?

A Pardon?

Q You can't tell us at all what Mr. Schmitz said Dr. Schaefer had promised him?

A No.

Q But he did say that Dr. Schaefer promised him something, is that correct?

A He did tell me -- he told me that he was talking about things of this kind with Dr. Schaefer.

MR. O'DONOGHUE: May I have number 50, please?

806 Q I show you Plaintiff's Exhibit 50 and ask you if you have seen the original of that letter.

A (Witness read letter) Yes, I think I have seen this letter.

Q And the attached?

A And the enclosure, yes.

Q And the attached statement of out-of-pocket expenses?

A Yes.

Q Directing your attention to the last full paragraph of that letter, on page 2, it stated:

"Reimbursements to me of my cost is extrinsic of the intrinsic values of any of the various kinds of services I have performed or shall have to perform in the future, and extrinsic of such capital or other values of the basis and approaches of settlement and to sale and disposition as conceived of, developed and carried to fruition by me, and through such facilities and assistance as is necessary shall have been provided by me through others, in order that the results shall benefit the common interest."

Do you remember that provision? You see it now, of course?

A I see it now.

807 Q What was your understanding of the meaning of that?

A It was also one of these absolutely unclear expressions I was used to.

Q It does suggest to you that Mr. Schmitz had a capital interest in the matter, does it not?

A No, it did not. It says here "capital," but I didn't know what he was meaning with that.

Q Did you ask for any clarification of that?

A No.

Q Did you attempt to say that he was not entitled to any compensation in any letter in reply to that?

A No, because I told him, as I mentioned before,

that if there is any agreement, he shall put it in writing, and reading this, I concluded that there was no agreement. It is just general hopes or ideas.

Q It suggests hopes of what kind?

A Hopes for some profit out of this transaction.

Q And that that necessarily come from Interhandel, would it not?

A Yes.

Q And you did not answer him and say, "Don't have any hopes of any such thing," did you?

808 A No, because I was telling him to give me a clear--- If there was an agreement, it could have been made clear; and that is the opposite, so that is just the way he hopes.

Q Because you could not understand, you did not ask for clarification?

A It's clarification enough for me that there was no agreement.

Q That was your understanding of that language?

A That was my understanding.

Q Did you tell him that was your understanding by any reply to that letter?

A I don't think so.

Q Is it true all you did in reply to that letter was send him a draft?

A Pardon. I didn't understand you.

THE COURT: He said he did not understand, and I could not hear you very well, either.

MR. O'DONOGHUE: Excuse me, your Honor.

Let me have Plaintiff's No. 51.

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 51 and ask you if that is your reply to Mr. Schmitz's May 4th letter.

A No, because that's dated the 6th; this is dated the 4th. That can't be.

Q Can't be an answer to it. So, those letters crossed
809 in the mail, is that it?

A Crossed.

Q Well, as soon as you got the letter of May the 4th, did you do something about paying those out-of-pocket expenses?

A I submitted that either to Saager or Dr. Schaefer, and then I think later it was paid.

Q Transferred by cable, is that correct?

A I don't know how it was transferred.

MR. O'DONOGHUE: Give me number 54, please.

I have got some mix-up in the exhibits, your Honor.

Would you mark this for identification, the next number.

THE CLERK: Plaintiff's Exhibit 133 marked for identification.

(Plaintiff's Ex. No. 133

marked for identifica.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 133 for identification and ask you if that is the cable you sent.

A Yes, that's my cable.

Q What is the date of that?

A May 13th is stamped here.

THE COURT: I can't hear you, sir.

-816 THE WITNESS: May 13th. I see a stamp here, May 13th, the date.

MR. O'DONOGHUE: I offer this.

THE COURT: Without objection, it will be received in evidence.

(Plaintiff's No. 133 received.)

BY MR. O'DONOGHUE:

Q Your letter of May 6th, Mr. Schmitz, you have it there, do you, Dr. Wehrli, that asked whether or not Interhandel^{people} should see Colonel Townsend when he came to Europe?

A Yes.

Q Did you address that to Mr. Schmitz in order to find

out whether or not that should be done?

A Yes.

THE COURT: What did you say, sir?

THE WITNESS: Yes, yes.

BY MR. O'DONOGHUE:

Q Who was Colonel Townsend?

THE COURT: I wish you would speak up so we can keep a record of what you are saying.

BY MR. O'DONOGHUE:

Q You asked Mr. Schmitz to let you know Mr. Schmitz's and Mr. Wilson's opinion as to that, did you not?

A Yes.

Q Did you get a reply to that?

A I don't remember.

810

BY MR. O'DONOGHUE:

Q Dr. Wehrli, I show you Plaintiff's Exhibit 52, and ask you if that was the reply to your letter of May 6th?

A That might be an answer.

Q Well, it might be an answer.

In any event, you were advised by Mr. Schmitz that in his and Mr. Wilson's opinion, you should not see Colonel Townsend, is that correct?

A That's correct.

Q You remember that?

A That's correct.

Q And as a result of that you did not see him, is that

correct?

A It wasn't up to me to see Mr. Townsend, as this letter says. It could be Dr. Schaefer meeting him in Paris.

Q Does the letter say it could be Dr. Schaefer?

A The letter reads as follows: As you know, Dr. Schaefer is away, and we talked about this matter in Paris. Of course it was in Italy. Incidentally, Dr. Schaefer is on the 18th of May in the afternoon anyhow in Paris, he could therefore arrange a meeting on the 18th in the morning, or perhaps on the 17th in the late afternoon if by reason of policy this should be advisable.

Q Well now, did you advise Dr. Schaefer not to meet with Colonel Townsend?

817 A I gave no advice of my own.

Q You passed on the advice, I say?

A Yes.

Q And do you know whether or not he met with him?

A I think he didn't meet him.

Q I see.

Now, I show you Plaintiff's Exhibit 53, which the first part of it is, can you identify that?

A Yes.

Q You asked Mr. Schmitz to give you a report of what was going on?

A What has happened since the Paris meeting?

Q And he replied and said he could send a letter?

A Yes.

MR. WILSON: Was 53 two pages? Beg your pardon.

BY MR. O'DONOGHUE:

Q Do you know whether Mr. Schmitz wrote a letter in response to that inquiry?

A He promised here a letter. I don't remember the letter.

Q You don't know whether you got one or not? Well, let's pass that, and --

Did you get word from Mr. Schmitz that Mr. Wilson, Charles Wilson, had agreed to accept the trusteeship?

A I don't remember whether this came through Mr.

818 Schmitz or whether it came indirectly from Mr. Wilson.

Q Did it come to you or did it come to Dr. Schaefer?

A That I don't remember either.

MR. O'DONOGHUE: May I have 53 and 57?

BY MR. O'DONOGHUE:

Q Do you know when Mr. Wilson agreed to accept the powers?

A Somewhere in May of 1960.

Q Now, I show you Plaintiff's Exhibit 56 and ask you if you remember sending that telegram?

A Yes, I did send this telegram.

Q The effect of that was to ask Mr. Schmitz for authorization to put out some publicity concerning the acceptance of Mr. Wilson, isn't that true?

A It was either Mr. Schmitz or Spofford who gave out the publicity. But I don't remember.

Q Didn't you ask that Interhandel give out the publicity?

A I think it was also intended that Interhandel give out the publicity.

Q I show you Plaintiff's Exhibit 57 and ask if you received that reply to your telegram of May 28th?

A Yes, I think I received this letter -- this cable.

MR. O'DONOGHUE: The number of that Exhibit was 57, I think.

May I have 58, please?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 58, and ask you if you remember that telegram?

A I don't remember, but it must have been done by me.

Q This asks Robert Schmitz to call you at home that night?

A Yes.

Q And do you remember whether he did that?

A No.

Q You don't remember the purpose of your desiring him

to call?

A Very likely in connection with the trusteeship, acceptancy of the trusteeship and the publication of these matters.

Q Did you advise him at that time that it was all right to notify Mr. John Wilson of the existence of the trusteeship?

(No response.)

THE DEPUTY CLERK: Plaintiff's Exhibit 134, marked for identification.

BY MR. O'DONOGHUE:

Q Did you answer that question?

A No, I need to refresh whether I advised him or not.

Q You don't know?

A No.

Q I show you what has been marked Plaintiff's Exhibit 134, for identification, and ask you what that is and if it refreshes your recollection of the telephone conversation of Mr. Schmitz?

A That is a cable to Mr. Spofford.

Q From you?

A From me.

Q Dated what?

A To authorize him to communicate with John Wilson.

Q And what else does it say?

A I said that I informed Robert Schmitz accordingly.

Q Last Saturday. Was that the date of your telephone conversation with him?

A I don't know all the Saturdays, what dates they are through the year.

Q Well, there was so many communications back and forth with Mr. Schmitz that it becomes a little confused in your memory, is that correct?

A That is true. That is true.

MR. O'DONOGHUE: I am offering that.

MR. STRICKLER: I have no objection to it. I was making a note of it because I got a little confused with my exhibits.

THE COURT: Without objection, the exhibit will be received.

* * *

821

MR. O'DONOGHUE: You do have a copy, don't you? I thought maybe it was for purposes of objection.

MR. WILSON: There was a letter of the same date, did you know that, and on the same subject.

MR. O'DONOGHUE: What is the date?

MR. WILSON: 5/31/60.

MR. O'DONOGHUE: Mr. Strickler, will you give that to the Clerk so she can mark it?

MR. STRICKLER: Yes, Your Honor.

BY MR. O'DONOGHUE:

Q You had advised Mr. Spofford, did you not, that Dr. Schaefer was going to tell John Wilson?

A It might be.

Q Is that your recollection?

A It is not my recollection unless I am supported by some documents.

THE COURT: I didn't understand what you said.

THE WITNESS: It is not my recollection whether I did it unless I can improve my recollection by some documents.

MR. O'DONOGHUE: All right. I will be glad to.

THE DEPUTY CLERK: Plaintiff's Exhibit 135, marked for identification.

* * *

822

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 135, for identification, and ask you if you can identify that and also whether it refreshes your recollection concerning the question I just asked you?

A Yes, that is a letter signed by me.

Q What is the date of it?

A It is the 31st of May, 1960.

Q To Charles Spofford?

A To Mr. Spofford.

Q Does that refresh your recollection?

A It does.

Q And what is your recollection so refreshed?

A My recollection is what is in this letter.

Q That is all right --

MR. WILSON: We have no objection, if that is what you are waiting for.

THE COURT: Are you offering the letter, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, I am offering it.

THE COURT: It will be received.

* * *

826

THE DEPUTY CLERK: Plaintiff's Exhibit 136, marked for identification.

* * *

BY MR. O'DONOGHUE:

Q Directing, I show you Plaintiff's 136 for identification and ask you if you can identify that?

A Yes, that is a letter signed by me.

Q Addressed to whom?

A Addressed to Robert Schmitz.

Q Dated?

A June 3rd.

Q 1960?

A 1960.

Q Does it have some enclosures?

A It says enclosure. And that is a clipping from "Neue Zurcher Zeitung", "Tat", "Basler Nachrichten" and "Agence Economique", and they are here.

MR. O'DONOGHUE: I will show this to the reporter.

MR. STRICKLER: No objection.

THE COURT: You are offering it, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, I do offer it, and I should like to ask some questions on it if I may have a moment.

THE COURT: All right. It will be received.

(Whereupon, Plaintiff's Exhibit No. 136 was received in evidence.)

* * *

BY MR. O'DONOGHUE:

Q There is a reference in this letter to a Mr. Morison. What is that about? Can you tell us?

A Mr. Morison was a correspondent of the New York Times in Zurich, and writing from time to time articles about Swiss-American matters, including Interhandel and GAF.

Q Why were you writing to Mr. Schmitz about him?

A Because I wanted to keep him informed, as Mr. Morison was rather a friend of Switzerland, and I think he was fired because of that by the New York Times.

Q Now, was it proposed that information be furnished by Mr. Schmitz to you for Mr. Morison's benefit, or what was

the purpose?

A No, no.

Q Information?

A Just general information that this Mr. Morrison is no longer here, with the New York Times.

Q Now, these four clippings that were attached, what did you propose that Mr. Schmitz do with them?

A I thought he will read it, and get informed how this news about the trusteeship was reproduced in the Swiss newspapers.

825

Q You considered it was important for him to know that?

A Not important, but interesting.

Q Desirable?

A Desirable, about it.

Q Did you expect he might translate this for the benefit of the trustees?

A I was sure that he was communicating about it with Mr. Charles Wilson.

Q You expected him to communicate constantly with Mr. Charles Wilson and you wanted him to, did you not?

A I, as I said before, I considered him as a kind of letterbox, and a mail collector, because I realized that when I was in New York that Mr. Charles Wilson has rather a small office at his disposal, and so I thought it is more convenient to send these correspondence to Mr. Robert Schmitz.

Q Mr. Charles Wilson's office is larger than a letter-drop, isn't it?

A Pardon me?

Q Mr. Charles Wilson's office is larger than a letter-drop, isn't it?

A It is larger than a letter-drop, but it was in a flat where there were, I think, about ten other offices and I didn't know whether he had a permanent secretary to put everything in files, and so on.

Q And you wanted Mr. Schmitz to make sure that all that was done, is that it?

A Sure that he would know that it was there, that it was in New York.

Q When did you next come to this country?

A I have to refresh my memory, I don't know.

Q You don't know that you came anymore that year or how often you came or anything of that kind? Do you remember coming on June 12 of 1960?

A It is possible.

Q You wouldn't deny it, would you?

A I wouldn't deny it.

Q And is it possible that you called Mr. Schmitz at his home when you arrived in New York?

A Definitely I called him.

Q Definitely you called him?

A Definitely I called him when I be in New York.

Q Whenever you came you got in touch with him immediately, is that correct?

A Yes, that is true.

Q Do you remember that there was any talk about the Alvord situation at that time?

A Yes, I was received by Alvord very generously.

Q I beg your pardon?

A Very generously.

227

Q No, but I am asking you if you asked Mr. Schmitz to do anything in relation to that with the Trustee?

A No, I didn't ask Mr. Schmitz to do anything with regards to Mr. Alvord.

Q Did you ask him to try to influence Mr. Charles Wilson to see Mr. Alvord?

A I don't remember, because if I had been in New York I had also talked with Mr. Charles Wilson, and I think I had informed him that I met Mr. Alvord and played golf with him.

Q Played poker with him?

A Golf with Mr. Alvord.

Q I didn't understand what you said. I thought you said you played poker with him?

A No, no poker. Golf.

* * *

Q Well, if you didn't call Mr. Schmitz about his using his influence with the Trustee to see Mr. Alvord, what did you call him for?

A I considered it at least as a matter of courtesy to call Mr. Schmitz, and we were on personal and quite friendly terms so we met each other in and out of business when we were either in the respective city.

823

Q Well, what was your purpose in coming to New York at that time?

A I think it was in one matter to keep contact with Mr. Wilson, and on the other side, to listen -- to listen to what Mr. Alvord was telling me.

Q What Mr. Alvord was telling you, was that in conflict to what you wanted the Trustee to do with you?

A It was rather in conflict.

Q It was rather in conflict?

Now, do you remember on that occasion of meeting with Mr. Schmitz and Mr. Wilson?

A No, I don't remember what.

Q You don't remember what, but you would deny that Mr. Schmitz came to your hotel and then went with you to the Trustee's office?

A I don't remember.

Q There were a number of occasions of that kind so you have a hard time separating one from another, is that it?

A That is true.

Q Do you remember a meeting with Mr. Charles Wilson and Robert Schmitz and Mr. Wilson complaining to you about the activity of an instruction of Mr. Alvord?

A I think I remember.

Q What do you remember? What do you remember in that respect?

829 A I -- just that he mentioned that he didn't like this activity, this running around, of Mr. Alvord.

Q Do you remember that Mr. Schmitz met with you when you were staying at the Hotel Drake in New York, oh, I think it was the 16th of June?

A Possible.

Q And do you remember his telling you that Mr. Wilson had instructed him to say that if you wanted a deal type of settlement, you could have one on a 40-60 basis, at any time?

A I don't remember.

Q You don't remember anything.

Do you deny that such a discussion occurred?

A I just don't remember. I can't.

Q And it could be 60 percent for Interhandel and 40 percent for the U. S. Government?

A I don't remember.

Q I see.

Did you go to see Mr. Alvord at that time?

A I remember that I did see Mr. Alvord during one or the other of my visits to the States. I don't remember exactly what visit it was. And I did see him in New York and I did see him in Washington, and our main activity was playing golf on the Burning Tree golf course.

Q Did you see Mr. John Wilson when you went to Washington that time?

A I think so I did.

230

Q And do you remember having a discussion with Mr. Schmitz after returning from Washington to New York?

A It is very likely that we met.

Q Do you remember having a lengthy discussion with him?

A I don't remember this.

Q Did you remember telling him that you considered John Wilson antagonistic to the Trustee?

A I don't remember.

Q But you may have?

A But I think Mr. John Wilson expressed some doubts when I saw him.

Q Doubts of what kind?

A Doubts.

Q Doubts of what kind?

A Of this procedure leading to the expected result.

Q That the Trusteeship -- he had doubts about that?

A Yes.

Q And did he express an antagonism toward the Trusteeship, or the Trustee?

A That is all. I said what I remember.

Q You don't remember how long you were in the United States on that occasion, do you?

A No.

Q Would it refresh your recollection if I suggested
681 that it was from June 12th to June 23rd?

A It's possible.

Q Possible.

And during those times, do you remember how many meetings you had with Mr. Schmitz?

A No.

Q But it was -- there were a number of meetings, were there not?

A I would say two or three. Because I was a few days in Washington, if that was that trip to the States when I was with Mr. Alvord in Washington. I stayed a few days here.

Q Now, did you have any discussion with Mr. Schmitz about the difficulties that the Trustee might have in accomplishing the mission?

A No, at that time.

Q Not at that time?

When you were in Washington, did you see Colonel Townsend?

A I think I crossed him at the -- when I was at luncheon at a club here.

Q At the Metropolitan Club?

A Yes, I was at the Metropolitan Club.

Q Did you talk to him at all then?

A I might have shaken hands, but no talk.

Q Did he tell you at that time that the Trust Powers had been received by the Department of Justice?

A I don't remember.

Q Going back a trifle before your visit to the United States, I show you Plaintiff's Exhibit 60 and 61, and ask you if you received those letters from Mr. Schmitz?

A Yes, I remember this letter.

Q And they were in the nature of reports?

A The letter of June 9th.

Q Oh, I am asking you about June 10th as well?

A This doesn't end, this copy.

Q There may be further papers, in other words?

A I have none.

Q Well, as far as that goes, remember that?

A I don't remember the contents of this letter.

Q I beg your pardon.

You don't remember the contents of this letter?

A It's too long.

Q I show you Exhibit 62, and ask if you can identify it?

A That is a letter of June 23rd, in which I say, "As you promised me, I found your letter of June 10 and would like to thank you for that." And I have received that letter.

Q And in that you thanked him for the detailed information?

A That is how it was stamped.

833

Q It is your recollection you appreciated the information he gave you?

A I would say it is more a matter of courtesy, because as I mentioned before these ~~too~~ long texts, I was not personally -- I was never personally appreciating.

Q Did you ask him to write shorter letters than that?

A No, that was not my business.

Q And you said you were pleased to see him in New York and hoped to maintain contacts with him?

A Yes.

Q And is that what you felt?

A Yes.

Q In other words, you wanted him to continue doing his duty, is that it?

* * *

A I mean it was not for me to want him to do it.

Q It was not for you to do it?

A No.

Q What do you mean by that? Were you acting under instructions?

Q A I am acting under instructions, yes.

Q And did you clear every letter you wrote with your superiors?

A No.

Q Did you have authority to carry on these dealings with Mr. Schmitz generally received from your superiors?

A It was in my discretion to do daily contacts with him.

Q And so, acting within this discretion, you did do this?

A I did.

Q And ask him to continue to operate, is that true?

A Yes.

Q And that was within the discretion given you by your superiors, wasn't it?

A That is true.

Q Now, did Mr. Schmitz tell you when you were in New York that he was working with Mr. Spofford and orienting him on the whole history of the litigation and the background of GAF and Interhandel?

A He told me that he was with Mr. Spofford.

Q He told you that?

A Yes.

Q Did you see Mr. Spofford?

A I saw Mr. Spofford quite frequently.

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Q No, I am talking about this particular trip?

A I don't remember on what trip it was. I did see Mr. Spofford frequently because he was preparing a certain memorandum.

Q Not at this time, was he?

A I don't remember when he started.

THE DEPUTY CLERK: Plaintiff's Exhibit 137, marked for identification.

* * *

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit 137, for identification, and ask if you can identify that?

A Yes, that is a letter of June 30, 1960, a short letter, five lines from me to Mr. Schmitz with some enclosures.

Q What were the enclosures?

A It's here, a clipping from a newspaper, and a translation.

Q Did you enclose a translation?

A No. That is not my paper.

MR. O'DONOGHUE: Thank you.

I am going to offer this in evidence, Your Honor. There is a translation attached that this witness doesn't identify, and perhaps it would be better to remove it, but it just seems more convenient to have it there.

THE COURT: Do you gentlemen have any objection to the translation being attached?

MR. STRICKLER: No objection, Your Honor.

THE COURT: Without objection, it will be received, including the translation.

* * *

BY MR. O'DONOGHUE:

Q The clipping is from the "Neue Zürcher Zeitung", is that correct?

A It says so, yes.

Q That was in German?

A That was in German.

Q You expected Mr. Schmitz to use his knowledge of German to translate that for the benefit of the Trustee and Mr. Spofford?

A I don't know who makes the translation.

Q Well, you wanted one made?

A Not necessarily.

Q You didn't need the Trustee informed about the contents of that --

A That could be also done with oral description of what is in it.

837 Q -- by Mr. Schmitz?

A By Mr. Schmitz.

Q In other words, you didn't just do this for Mr. Schmitz? benefit, you wanted it communicated to the Trustees?

A As I said before, yes.

Q Now, Dr. Wehrli, by this time you were on a first-name basis with Mr. Schmitz, were you not?

A Yes.

Q And you addressed him as "Dear Bob", which prompted him to reply to you as "Dear Ulrich"?

A I think he started it, in the American style.

Q You think there is a letter from him to you of that kind prior to your writing to him that way?

A I guess, because I never start first-name addressing.

THE DEPUTY CLERK: Plaintiff's Exhibit 133, marked for identification.

* * *

MR. O'DONOGHUE: May I have 61 and 62 again?

MR. WILSON: What did you do with 133 for identification, anything?

MR. O'DONOGHUE: Not yet.

BY MR. O'DONOGHUE:

Q Dr. Wehrli, you looked at these exhibits before. One

232 is Plaintiff's 62 and the other is 63, and one is a letter to you of June 10th, and how is the salutation there?

A There it is "Dr. Wehrli", yes.

Q "Dear Dr. Wehrli"?

A Yes.

Q And I show you 62, is that in reply to the letter of June 10th?

A That is in reply.

Q To Exhibit 61?

A To Exhibit 61.

Q And how is that addressed?

A That is addressed, "Dear Bob";

Q Is there any correspondence in between?

A I don't know.

Q You don't? Could there have been?

A There could be correspondence before, or that could be because this looks as very official, and it could be that on the meeting in New York we were starting calling on first names.

Q I was asking you about the letters. You said he started the first-name business in the letters?

A No, I said he started first name.

Q Oh, you don't mean in the letter?

A Not in the letters.

Q I see. Now, I show you a letter marked for identifi-

80v cation, Plaintiff's 133, and ask you if you remember that letter or can you identify that letter?

A Yes, I do remember this letter.

Q Was that received by you from Mr. Schmitz?

* * *

MR. O'DONOGHUE: Well, what I have said in regard to 133 for identification, I am really referring to 63, so I won't offer this.

THE COURT: So you are not offering 133, very well.

MR. O'DONOGHUE: May I have this marked?

THE DEPUTY CLERK: Plaintiff's Exhibit 139, marked for identification.

* * *

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 139, for identification, and ask if you can identify that?

A Yes, that is a letter I sent on August 3rd to Mr. Robert Schmitz.

Q Was there an enclosure, Dr. Wehrli?

A If it is marked "enclosure", then it was.

Q There isn't any possibility of your having omitted the enclosure?

A That is a matter of my secretary, whether she has or whether she has not.

MR. O'DONOGHUE: I offer this, Your Honor.

MR. STRICKLER: No objection.

THE COURT: Without objection, it will be received.

* * *

BY MR. O'DONOGHUE:

Q This enclosed a clipping from a financial paper in Zurich?

A That is true.

Q It was for Mr. Schmitz' information, was it?

A That is true.

841 Q And to aid him with his work with Mr. Charles Wilson and Mr. Spofford?

A Yes.

Q To make sure he was fully informed, and so he can cooperate?

A That is true.

Q Also for the purpose of having him translate it and passing it on?

A I think it was an article that it would be worthwhile to make a translation, because this newspaper is of minor importance.

Q And Mr. Schmitz would have known that, would he?

A He would have known that.

Q So you were relying on his knowledge and discretion.

to determine whether or not --

A That is true.

Q -- whether or not it was worthwhile?

A Translating it.

Q Translating that for the benefit of the Trustee, is that it?

A Yes.

MR. O'DONOGHUE: May I have 65, please?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 65 and ask you if you can identify that, whether you remember that?

842 A I don't remember this letter of August 9th. I don't because I am doubtful whether there are important facts in it.

Q Beg your pardon?

A I don't know whether there are any important facts in it. In this letter.

Q Well, what does that got to do with whether you received it or not?

A I just -- I say I don't remember this letter. And these studies.

Q If you saw the original handwritten copy, would that refresh your recollection?

A That would refresh it, I would be sure that I had it.

* * *

Q I show you the original handwritten letter dated August 9, and ask you -- of which Exhibit 65, for the Plaintiff, is a transcript -- and ask you if that refreshes your recollection that you received such a letter?

A I do not recollect, but I have no doubt that this has been mailed.

THE COURT: I am not sure I understood the answer. You had no doubt that what?

THE WITNESS: That this letter had been mailed to me and received.

THE COURT: Mailed to you and received. All right.

BY MR. O'DONOGHUE:

Q May I show you Plaintiff's Exhibit 72 and ask you if you remember having sent that letter?

A This I remember having sent. That is my signature.

Q Would you mind reading aloud the third paragraph of that letter?

* * *

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THE WITNESS: (Reading:)

"It is entirely clear for me that a well planned procedure requires much time, but I am convinced that it is much more useful to have a good plan and to take into consideration all eventualities, than to make steps only in view of the present situation and the very next future."

BY MR. O'DONOGHUE:

Q Now, did that sentence reflect the views of Interhandel?

A No.

Q They did not?

Weren't you Number 3 in command in Union Bank?

A It was my personal opinion.

Q That this whole procedure would take a long time, or a good bit of time?

A A good bit of time, because in the newspaper and everywhere everybody was pressing. For immediate results.

Q In the newspaper everything was pressing for immediate results?

A Everybody was pressing. Like Brupbacher and other people.

Q Who?

A Brupbacher.

Q He was a shareholder?

A A shareholder.

Q He was asking for immediate results.

Did you tell Mr. Brupbacher that you couldn't expect immediate results?

A No, I never talked with Mr. Brupbacher about this matter.

Q But you told Mr. Schmitz that the important thing was a carefully prepared plan, and that that would take some

time to execute?

A That was my personal opinion. That is why it was written on personal paper and not on Union Bank paper.

Q Oh, that is an important distinction, is it?

Were you acting in a different capacity in writing this letter than in writing the other letters?

A We were on so-good personal terms that when he wrote me a long letter like that, and I answered him, and the letter he wrote me was more of personal character, I answered him personal character.

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Q Did you tell him that was only your personal opinion?

A It was evident.

Q I see.

Now, this same letter contains references to letters that you read to -- letters to Dr. Schaefer -- and discusses generally the whole problems and the posture of the Interhandel-GAF situation with regard to the Trusteeship?

A Um-hum.

(Reading.)

Q Isn't that correct?

A I said, "I also have read with great interest the letters from Mr. Charles Wilson to Dr. Schaefer", which were the official letters.

Q Yes?

A "About the results of the recent meeting of the

Executive Committee of the Board, Dr. Schaefer has informed you and Mr. Wilson."

That is the official part. But I informed Mr. Schmitz that I have been informed myself of these things.

Q And then you also went on to say that you talked to Dr. Saager --

A Mr. Saager.

Q -- about your coming to this country?

347 A That I discussed it and I believe that for the next weeks it will be hardly necessary to do so -- it was my belief. "However, I think that perhaps in October or beginning of November it might be useful to be in a position to discuss this matter with you and the other Gentlemen and not to depend entirely on correspondence."

Q Well, all of this is in the scope of your discretion, was it not, to discuss these matters?

A No, not to discuss these matters was not in my discretion, but that gave my opinion about the sense of possible trip to the States.

Q And that was within your discretion?

A That was my -- my opinion, I expressed.

Q In other words, you are trying to tell us that this was not an official letter?

A That is true.

Q And that it was your own personal opinion?

* * *

648

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT A. SCHMITZ,

Plaintiff,

-vs-

SOCIETE INTERNATIONALE,

Defendant.

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Civil Action No. 85-87

Washington, D.C.

Tuesday, January 13, 1970

The above-entitled matter came on for further trial Tuesday, January 13, 1970, at 10:00 a.m., before THE HONORABLE JOSEPH C. McGARRAGY, Judge of the United States District Court for the District of Columbia.

APPEARANCES:

As heretofore noted.

U. Wehrli (cont.)

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CROSS-EXAMINATION

BY MR. O'DONOGHUE:

Q Dr. Wehrli, yesterday afternoon we were talking about the period around September of 1960, you will remember. Now, from that time on, did you continue to have a correspondence with Mr. Schmitz for several months thereafter?

A From time to time, yes.

Q How often, would you say?

A I don't remember.

Q And you would write to him and send him clippings for one thing, is that true?

A That's true.

Q And you would ask his opinion about various matters, isn't that true also?

851 A Might be true.

Q And you talked about the coming elections, among other things, isn't that true -- the presidential election in this country?

A No doubt that was mentioned in one letter or the other.

Q Did you also mention the possibility of your coming to this country sometime in the fall of 1960, do you remember that?

A I don't remember.

Q Do you remember that Mr. Spofford and Mr. Schmitz came to Zurich in October of 1960?

A They came to Zurich in that year.

Q Did you have various conferences with them and when I say with them, I include Mr. Schmitz?

A I had conferences with them.

Q As to the progress of the trusteeship and that sort of thing?

A I think it was mainly concerned with this expose -- in English --

Q This memorandum?

A Yes. Memorandum.

Q Do you think that was being done in the fall of 1960 or was that not a matter that was being discussed when they came in the spring of 1961?

A I don't remember when it was made.

Q It could have been --

A Either one.

Q They did come again in March of '61, is that correct do you remember that?

A I don't remember but it might be true.

Q Do you remember that in October of 1960, I believe October the 14th, that you had some meeting with Mr. Schmitz and which Dr. Sturtzenegger was discussed?

A I don't remember.

Q Do you remember whether or not you asked Mr. Schmitz to go to ^{Basel}~~Brazil~~ and see Dr. Sturtzenegger and ask for his cooperation with Union Bank?

A I don't think so, but we talked about Mr. Schmitz visiting his friend, Sturtzenegger.

Q Did you request him to do so?

A I don't remember.

Q Do you remember whether or not you wanted the cooperation of Dr. Sturtzenegger at that stage?

A I don't think I did.

Q You don't think so. Do you know whether he went to
653 see Dr. Sturtzenegger?

A I think he did.

Q Did you then go to see Dr. Sturtzenegger?

A No.

Q You never saw him after this time?

A I don't remember.

Q You don't remember?

A No.

Q Did you have any communication with him at all?

A I don't think so.

Q Was it about this time that some payment was made
to Mr. Schmitz by Union Bank?

A Regular payments were made.

Q What do you mean by that?

A Monthly payments of \$2,000.

Q When did they begin?

A I don't remember the date.

MR. O'DONOGHUE: May I have Exhibit 73, please?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 78 and ask you if that represents the first payment that was made to Mr. Schmitz except for expenses?

A Yes, that is true.

THE COURT: Is that dated, Mr. O'Donoghue?

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THE WITNESS: That is dated October 25, 1960.

THE COURT: 1960.

BY MR. O'DONOGHUE:

Q And that was the first payment made?

A I think there was one payment made before for expenses and fees.

Q But only for expenses?

A For travelling expenses and this kind of --

Q Yes. That was made in May, was that correct?

A I don't remember the date.

Q And the only payment then made to him for holding his knowledge at the disposal of the matters which is of the greatest interest for the protection of private property in the defense of Swiss interests abroad June till October 1960. In other words, that started from June of 1960?

A Yes.

THE COURT: I assume you are reading from the exhibit, Mr. O'Donoghue?

MR. O'DONOGHUE: Yes, Your Honor, I am.

BY MR. O'DONOGHUE:

Q Was this intended to be a retainer then for holding himself available to the trustee?

A Yes, that's true.

Q Did Mr. Schmitz inform you, when he saw you that he
855 considered it an interim payment on account?

A We didn't talk about that.

Q Did he ever write you a letter to that effect?

A I think in one letter it was mentioned, something like that.

Q To you?

A To me or to Dr. Schaefer. I don't know in what letter.

Q Did you contest that statement in any way?

A No.

Q What was the next visit of you to the United States, if you remember?

A I don't remember the dates.

Q Would it have been in December of 1960?

A It's possible.

Q Did you have anything to do with Mr. Burdich coming to the United States at that time?

A He was before, incidentally, in the United States.

Q I beg your pardon?

A He was before rather incidentally in the United States because he was not connected with this Interhandel matter.

Q He was not connected with it?

A No.

856 Q Did you advise Mr. Schmitz that he was coming to the United States?

A I don't remember.

Q I show you Plaintiff's Exhibit 91 and ask you if that refreshes your recollection of Mr. Burdich's visit to this country?

A I apparently advised him that Burdich is at that date in New York.

Q Did you instruct Mr. Burdich to get in touch with Mr. Schmitz?

A No.

Q Well, what instructions did you give him in relation to Mr. Schmitz?

A I didn't give him any instructions.

Q Who did, do you know?

A It may be that Mr. Saager gave him instructions.

Q You don't know why he came at all, is it?

A He definitely did not come on purpose of Interhandel. Apparently for some other purposes.

Q Well, we are not concerned with other purposes.
What was he to do in connection with Interhandel?

A He was very likely meeting Mr. Schmitz, I don't know whether he also met Mr. Wilson.

Q Dr. Wehrli, I show you Plaintiff's Exhibit 90, which
257 is a letter from Mr. Schmitz to Mr. Saager, and ask you if you know about that letter?

A (Witness reading letter) I don't remember this letter but it confirms my guess that Mr. Saager was instructing Mr. Burdich.

Q I show you Plaintiff's 88 and ask if that further refreshes your recollection about it?

A (Witness reading letter) Yes.

Q Well, now, what do you recollect?

A Pardon?

Q What do you recollect?

A That I wrote to Mr. Schmitz about Mr. Brubaker and confirmed that he has no mandate.

Q Well, I am talking about Mr. Burdich at the present moment. Didn't you know that Mr. Schmitz was told that he was well informed about the whole matters and that he should discuss it with Mr. Burdich?

A Mr. Burdich was Mr. Saager's righthand man, so he was, by his activity informed about what was Mr. Saager handling.

Q Did you come to the United States about this time?

A I came to the states soon after Mr. Burdich's visit.

Q What was the occasion of your coming?

A Mr. Burdich reported that there seems to be some
258 misunderstanding, possibly caused through these visits of
Brubaker and the others.

Q Did you know that Mr. Charles Wilson had telephoned
Mr. Saager and offered to come to Zurich to discuss a possible
settlement of this matter?

A I don't remember.

Q Do you know that instead of that, Dr. Schaefer in-
structed you to go and discuss the matter with the trustee?

A My mission, as I recollect, was not to discuss settle-
ment but to smooth some uneasy feelings caused by this visit
of Brubaker and others.

Q When you came to the United States, who did you get
in touch with?

A Definitely with Mr. Schmitz, mainly with Mr. Charles
Wilson and I suppose also with Mr. Spofford.

Q What was discussed at the meetings with Mr. Wilson?

A I told him that nothing has changed since the meeting
in Paris.

Q Was that the purpose of your coming?

A That was the main purpose.

Q How long did it take you to tell him that?

A I don't know.

Q How long were you here?

A I don't remember.

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Q Several days?

A Might be.

Q Do you remember the trustees reporting to you about meetings he had had with Colonel Townsend of the Department of Justice?

A No doubt he told me about meetings he had.

Q What did he tell you?

A I don't remember.

Q Could he have told you that if you wanted a settlement that he could obtain one on very favorable terms?

A I don't recollect.

Q You don't remember?

A No.

Q Did you tell him not to settle for the sake of settlement but to continue to try to get the full return of the property?

A I told him that the position of Interhandel is the same as it was in Paris.

Q And what was that position?

A To get full recovery.

Q Not to settle for anything less?

A Yes.

Q Not even for 75 percent to the Interhandel and 25 percent to the United States Government?

A That was not my business.

Q That was not your business. Did you suggest that he see Dr. Schaefer about that?

A I don't remember.

Q How many times did Mr. Schmitz come to Zurich in the spring of 1961?

A I don't remember.

Q Do you remember whether you went to this country during that period?

A Very likely.

Q You don't remember it?

A I don't remember exactly.

Q How late did you continue active in this Interhandel - G.A.F. matter?

A I stopped in spring or early summer '62.

Q What were you doing during '61?

A I was from time to time discussing things and contacting Mr. Charles Wilson, Mr. Spofford. I was assisting him in writing the memorandum.

Q When was this memorandum written?

A I don't remember.

Q I know, but when you are saying you did it in '61 -- then you mentioned that you did it in '60, you don't know?

260

A I don't remember the dates.

Q Where was that preparation of the memorandum being done, was that being done in Zurich?

A I think once he sent a copy, a draft, to Zurich, and I discussed it once or twice in New York.

Q Did Mr. Spofford work on it in Zurich on one of his visits?

A Not much, because it was mainly done by an assistant of his.

Q You don't know that from your own personal knowledge?

A I know from my personal knowledge because I met his assistant.

Q Who was that?

A I don't know his name but it was said that his father was chairman or president of one of the airlines in the United States.

Q When Mr. Spofford was doing some work on it in Zurich was Mr. Schmitz working on it, too?

A I don't remember.

Q Did Mr. Charles Wilson tell you that Mr. Schmitz was working on the memorandum?

A He mentioned it but about through '61 Mr. Charles Wilson and Mr. Spofford told me that Mr. Schmitz was of no great help, and wasted their time.

Q Mr. Wilson told you that?

361

A Yes.

Q When did he tell you that?

A Pardon?

Q When?

A During one or two of my visits in his office.

Q You can't place the date of them?

A No.

Q You don't know what year they were?

A Very likely in '61.

Q Why is that likely?

A Because to my recollection, it was not in '60.

Q Your recollection is it was not in '60?

A Yes.

Q Could it have been '62?

A No.

Q Why not?

A Because there was no more question of this memorandum.

Q You are talking about the memorandum solely. Did you know of any affidavit prepared for Mr. D.A. Schmitz that was shown to the Interhandel people in Zurich?

A I remember that. Mr. Schmitz was working on that affidavit.

Q Robert Schmitz?

A Robert Schmitz, yes.

852

Q Did he furnish you with a copy?

A I think so.

Q When was that done?

A I don't know.

Q Do you know Mr. Benjamin Javits?

A There came one Mr. Javits to Zurich and I met him.

Q At whose invitation did he come?

A He was brought to Saager's office by a client of Saager.

Q Did the Interhandel people request him to do anything on their behalf?

A No. He did it of his own.

Q Did he furnish an opinion?

A He wrote a letter or a memorandum.

Q What was the memorandum about?

A I don't remember.

Q Did it concern the G.A.F. matter?

A Yes.

Q And you don't remember what it was about?

A No.

Q Was it with regard to getting rid of the trustee?

A I don't think so.

Q What do you think it was -- you don't have any idea?

863

A I considered it as a nuisance.

Q You knew he was a lawyer, did you?

A I knew he was a lawyer and was a brother of an important politician.

Q And that prompted you to treat him favorably?

A That prompted me to treat him correctly.

Q Did he say anything about looking at the trustee's memorandum?

A I don't think so.

MR. O'DONOGHUE: Will you mark this for identification, please?

THE DEPUTY CLERK: Plaintiff's Exhibit 140 marked for identification.

BY MR. O'DONOGHUE:

Q Dr. Wehrli, I show you what has been marked Plaintiff's Exhibit for identification number 140 and ask you if you can identify that?

A (Witness reading) That is a letter signed by me.

Q To whom and what was the date?

A That is a letter to Mr. Spofford dated October 12, '61.

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MR. O'DONOGHUE: I offer this, Your Honor.

MR. STRICKLER: No objection.

THE COURT: Without objection it will be received.

BY MR. O'DONOGHUE:

Q Does that refresh your recollection as to Mr. Javits wanting to see the memorandum?

A Yes.

Q And does it refresh your recollection as to why he wanted to see it?

A Because he tried to mix in, in the matter.

Q Did he send Interhandel a bill for his services?

A He sent a bill for trip expenses and I think he also pretended -- presented a bill for services.

Q Presented a bill for services?

A That he sent a bill pretending having done services.

Q And that bill was paid?

A There was a long discussion whether it should be paid because he came in uninvited.

Q Was it paid?

A I think it was partly paid.

MR. O'DONOGHUE: I have no further questions.

THE COURT: Do you have any redirect, Mr. Wilson?

MR. STRICKLER: No questions, Your Honor.

THE COURT: You may step down, sir.

855-
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CHARLES E. WILSON

was called as a witness for the plaintiff, and after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q Will you state your name please?

A Charles E. Wilson.

Q Where do you live, Mr. Wilson?

A Scarsdale, New York

Q Would you for the record give us a brief story of your life and what positions you have held generally, and I guess you can't tell us all, but tell us some of them.

A Well, you say the "story of your life." I am a New Yorker. I was born in New York City and worked there for the first 30-some years of my life. I went to work for a subsidiary of the General Electric Co. in 1899. I was 12 years old, but they didn't know it.

I worked there at the Sprague Electric Branch of
876 General Electric for many years in a variety of jobs, and then ultimately went into sales and engineering operations at a plant in Long Island City.

From there I was transferred to an operation at Bridgeport, Connecticut, and after seven years' operations there, I became a vice president of the General Electric Co. and eight years later became the first executive vice president that General Electric had and it took me two more years before I became president.

Q What year was that, sir?

A 1938 - 1940, I became president. And I was enjoying that job until 1942 when then-President Roosevelt got me down to Washington and asked me to resign as president of General Electric and come down and be Vice Chairman of the War Production Board. Four months later I became Executive Vice Chairman of the War Production Board and Chairman of the Aircraft Production Board and Chairman of the Executive Production Board, and continued in the operation of the War Production Board until September 1944, and I went back and got my old job back as president of General Electric, and then in 1950 continued in that job until 1950 -- which was my 51st year with General Electric, when President Truman induced me to come down to Washington as the first War Mobilizer for the Korean War.

Q How long did you stay in that ---

A Until early part of '52.

877 Q What did you do thereafter?

A Oh, a number of things, but I finally ---

Q Did you go back to General Electric then?

A No, no, I was too old. No, in 1952 I became a consultant for W. R. Grace & Co. in their operations around the world and then in 1954 I became chairman of the Board of W. R. Grace & Co., and in 1956, I think -- yes, 1956, I resigned.

President Eisenhower wanted me to take up this operation that was announced in late '55, People-to-People, and it was.

a worldwide job and required a lot of traveling, so I had to give up all business operations when I undertook it.

Q What was your position there?

A I was the head of the People-to-People.

Q How long did you continue in that?

A Four years.

Q When did you first become acquainted in any way with General Aniline and Film?

A That goes back quite a ways. In about 1947, it might be '48 -- '47 or '48 -- I got a call from Attorney General Tom Clark, who happened to be an old friend, and he invited Mr. Sidney J. Weinberg, now deceased, and myself to go down to Washington and meet with him, and when we got there we found out he wanted us both to become directors of the General Aniline and Film.

That was the first time I knew anything about the GAF
878 operations -- anyway we both declined the offer.

Q Returning to your stint with W. R. Grace & Co., what were your principal duties there?

A You mean from the time I started?

Q Well, yes. Did they vary a great deal?

A Varied a great deal. I sometimes was off on trips to South America in their operations, which were everything from mining to -- they were the biggest biscuit-makers in South America,

and to give you some idea of the scope of their business -- I looked over all their operations there, which numbered about 50.

Q Did you have anything to do with acquisitions or expanding of the business?

A Yes.

Q What was your function in that respect?

A At this point I am talking about, I was still a consultant and the president wanted me to look over some of the new acquisitions and some of the proposed acquisitions, which I did around the United States, and some in South America.

Q Did there come a time when Grace evidenced interest in GAF?

A Yes. That was in about '53, I think. It may have been '52 or '53 when Tommy Corcoran of Washington got hold of Peter Grace, the president of W. R. Grace & Co., and told him that GAF might be acquired for \$40 million, and he roused Mr. Grace's
879 interest in looking into it.

Q Did you have any function in connection with this?

A Well, only as an adviser to Mr. Grace, who took the initiative in his checkup of the GAF possibilities.

Q And that was true during the whole time that there was any consideration of acquiring GAF?

A Essentially, yes.

Q When did you first meet Robert Schmitz, the plaintiff in this case?

A Sometime --- I would think six months or so after Tom Corcoran had contacted Peter Grace about the GAF possibilities, Mr. Schmitz came to see me, as I remember, with Mr. Al Wenzel, who was an old friend of mine from my electrical company days.

And they saw me and I found out it was to promote our interest in acquiring GAF.

Q What was the length of your discussion with Mr. Schmitz at that time?

A You mean the first discussion?

Q Yes.

A Well, it was a pretty long one, but I don't remember just how long it was.

Q Generally speaking, what was discussed then?

MR. WILSON: If Your Honor please, for the record may I make the objection that I have on previous occasions to this being hearsay.

880 THE COURT: Yes, I will make the same ruling, overrule the objection.

MR. WILSON: This goes to all ---

THE COURT: That's right, goes to all of them.

You may proceed.

BY MR. O'DONOGHUE:

Q I think I asked a question. I will ask it again to save time.

What was discussed at this meeting with Mr. Schmitz?

A Well, the possibilities of the acquisition and what might be done with it, with GAF, in view of W. R. Grace's announced intention of widening its influence in the chemicals business.

Q What purpose was Mr. Schmitz to serve in this?

A Well, Mr. Schmitz displayed a knowledge of GAF which, of course, we hadn't gotten from Tommy Corcoran. He knew all about GAF activities and the lines they manufactured and sold and so on, and this was the first time we had any real knowledge of the potentials of the acquisition that was proposed by them.

Q Did he indicate any knowledge of Interhandel?

A Well, he told us at the time that Interhandel was the holder of the principal stock of GAF.

Q Was any agreement entered into by Grace with Mr. Schmitz?

881 A Yes. After a while, with increasing interest on the part of Mr. Peter Grace, an arrangement was made between Mr. Schmitz and Peter Grace to have him act as their agent in furthering more detailed investigation with Interhandel.

Q Was any arrangement made for compensation?

A Yes. He was, as I recall it -- he was paid a monthly stipend for it. I can't remember just what it was -- and if a

deal was made with Interhandel by Grace ultimately, Mr. Schmitz was to be cut in, as I remember, for 10 percent.

Q Ten percent of what?

A Of the total value of the GAF operation.

Q Did anything come of Grace's effort?

A Yes, after much work on Mr. Schmitz's part with Mr. Peter Grace and, I think, Mr. Schmitz went over to Switzerland and worked on it over there, there came a time when it was arranged for Peter Grace and myself, accompanied by Mr. Schmitz to go meet with the Interhandel people to discuss the ---

Q Approximately when was that, if you remember?

A It was somewhere around '53, late '53 or '54, I think.

Q Do you remember who was at the meeting?

A You mean representing ---

Q In Switzerland.

A No, no, I can't recall the names of the people. I only met them that one day, I don't remember.

Q Did any agreement eventuate with Interhandel as a result of that?

882 A Yes, this much of an agreement. Peter Grace made an offer which was dictated really by what Tommy Corcoran had told them it could be acquired for, but as I remember it, Interhandel said they wanted 50 percent more before they would consider the deal.

Q Did that terminate Grace's interest in acquiring GAR?

A Pretty much.

Q Were any further efforts made?

A I can't remember any further efforts.

Q Did Mr. Schmitz continue in the employment of W. R. Grace after that time?

A For a time, a short time, I don't remember how long it was.

Q You then left Grace in 1956, I believe you testified?

A That's right.

Q After 1956, and up until 1958, did you meet with Mr. Schmitz at all?

A Yes. When I -- during the period that I was working on People-to-People, and thereafter indeed, Mr. Schmitz kept up his interest very obviously in some kind of a deal with Interhandel, and at his request I introduced him to a number of heads of companies that he said might be interested and did -- I think so, yes, I thought so -- and I helped him get acquainted with these people and gave my opinion to the people as to the
823 potentials of the deal and so on, at Mr. Schmitz's request.

Q Do you know who any of these people were? Do you remember now?

A Who the companies were?

Q Yes.

A Well, I remember one was Food Machinery Co. Mr. Davies was the head of it. Another was General Dynamics. Mr. Pace was the head of it at the time. And there was National Lead, I think it is, but I don't know if I had anything to do with bringing Mr. Schmitz together with them. I am not sure of that, but anyway, they were interested and Mr. Schmitz asked me a number of times to see the head of that company about it.

Q Now, did -- do you remember whether Mr. Schmitz came to see you in the fall of 1958 after a visit of his to Switzerland?

A Yes, I remember he came to see me and said that they were thinking of a new tack, and with respect to their efforts to get back the stock and get their business back -- GAF back into Switzerland.

Q And did he say what that tack might consist of?

A Yes, he told me that he had suggested to them that they get some American citizen to represent them as trustee, and go to work with the current Administration, the Department of Justice, to get back the business into Interhandel's hands.

Q Did he inquire whether you would be willing to
834 consider such a position?

A Yes, he did.

Q Can you tell us what that discussion was?

A Well, I said I would want more information before I could make up my mind to it. There were a lot of things I would

like to know before I did, but -- and I remember making it clear to Mr. Schmitz that since my own country was involved in this thing in its honor, just as he kept reminding me that the honor of the Swiss was allegedly -- had some taint, enemy ownership and so on, that I would not undertake such a job, because it obviously would have been a job -- unless my Government understood the terms under which I was doing it, that I would not accept any compensation for it, and if my Government was willing, desirous of having me become the trustee for Interhandel, I would consider it.

Q What did you do pursuant to that discussion?

A Well, ultimately there was a meeting called in Paris ---

Q No, I am not talking about that. Did you make any inquiries of anybody in this Government about ---

A Of course.

Q Can you tell us who they were?

A Well, they were in high places. I don't know whether I want to name names, but they were in high places -- higher than the Attorney General.

MR. O'DONOGHUE: Do you have Plaintiff's Exhibit 11?

835

BY MR. O'DONOGHUE:

Q Did Mr. Schmitz suggest, at the end of '58 or early '59, any meeting between you and anybody in Interhandel?

MR. WILSON: What year is that, Mr. O'Donoghue?

MR. O'DONOGHUE: End of '58 or early '59.

THE WITNESS: I guess that the meeting he suggested that I meet with -- I don't know whether that was the meeting at which he suggested he had set up in Paris for me to meet with ---

BY MR. O'DONOGHUE:

Q That was in 1960, wasn't it?

A Yes, that was '60.

Q Do you remember meeting a Dr. Frey?

A Oh, yes. Mr. Schmitz had Mr. Frey in one day.

Q He came to this country, did he?

A I believe he did.

Q Did he indicate who he represented?

A Well, my recollection is that he represented Interhandel -- I don't know ---

MR. WILSON: May I have that clarified, if Your Honor please? His recollection is that he represented Interhandel. Is it his testimony that Mr. Frey so informed him?

THE COURT: Can you tell us, Mr. Wilson?

THE WITNESS: What is that again?

THE COURT: Did Mr. Frey inform you that he represented
886 Interhandel?

THE WITNESS: I don't remember. I can't remember.

MR. WILSON: Then I move to strike the answer.

THE COURT: Wait a second. I am not sure. What do you say to his motion to strike the answer?

MR. O'DONOGHUE: I think it speaks for itself. He says he doesn't remember, but he thinks he told him that. I think it goes to the weight of the testimony.

THE COURT: Yes, I will overrule the motion to strike.

Mr. Frey was there and Mr. Wilson understood that he represented Interhandel, is that a correct statement?

MR. O'DONOGHUE: That is what I understand.

MR. WILSON: I didn't hear the witness say that.

THE COURT: Did you understand Mr. Frey represented Interhandel?

THE WITNESS: That was my understanding.

MR. WILSON: Then I move to strike.

THE COURT: I will overrule the motion.

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 11 and ask whether that represents the date of the meeting -- whether it refreshes your recollection of the date of the meeting with Dr. Frey.

A (Reads document.) Is this the date of the thing?

Q The date of it is January 16, 1959. I am talking about the text of the telegram.

887 A The text. I remember this, yes.

Q Where did you meet with Dr. Frey?

A Well, it was in New York, but I don't remember where it was. I can't remember.

MR. O'DONOGHUE: May I have Plaintiff's 12 please?

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you Plaintiff's Exhibit No. 12, and ask you if you have seen that?

A Yes.

Q What does that represent, Mr. Wilson?

A It is a broad outline, I would say, of the job that the proposed trustee, which would be myself if I accepted it, what he would undertake to do, or what was expected of him to do.

Q Whose position was that?

A I don't know, it isn't mine. I don't know who.

Q Did that come out of the meeting with Dr. Frey?

A I don't know.

Q Mr. Wilson, I show you Plaintiff's Exhibits 17 and 21 and ask you if you received the original of those letters?

A Yes, I recall these.

THE COURT: You recall both letters, Mr. Wilson?

THE WITNESS: Yes.

BY MR. O'DONOGHUE:

Q In Plaintiff's 17, when he speaks of our common
222 friend, who is he referring to?

A Mr. Robert Schnitz.

Q In No. 17, the first letter says, "I have received two letters, dated March 4 and 7, through which he informed

me of your negotiations with Mr. Rogers." What was he referring to there?

A The Attorney General.

Q Well, were there any negotiations with the Attorney General at that time?

A Mainly ascertaining whether my own Government would have any objection to my -- or actually would they be desirous of having me accept the trusteeship.

Q Was there any discussion between you and Mr. Frey or Mr. Schmitz about the possibility of your obtaining counsel if you did accept such a ---

A Yes. From the moment that -- well, from the very first discussions I had with the Swiss, I said I would want to have the best possible counsel that I could obtain if I undertook this trusteeship.

Q Did you indicate who that would be?

A Yes. And they knew of Mr. Spofford, whom I was thinking of and talking of, and they thought he would be very desirable.

MR. WILSON: May I find out who "they" is?

THE COURT: I understand he is referring to Mr. Schmitz and Mr. Frey. Am I correct in that regard?

889 THE WITNESS: That's right.

BY MR. O'DONOGHUE:

Q Did you subsequently learn whether or not there had been a change in the management or ownership of Interhandel?

A I don't think I know anything about that.

Q In the fall of 1959, did Mr. Schmitz talk to you any further about a trusteeship?

A Oh, yes, he talked to me a number of times about it.

Q What did he talk about?

A He talked about the necessity of having the terms of the trusteeship documented so that it would be to clearly point out the responsibilities of the trustee and so on.

Q Did you insist on that?

A I don't know whether I insisted on it, but I would have insisted upon it if he hadn't. But he told me that he had been asked by the Swiss to draw up a document that would be satisfactory to the Swiss and he hoped satisfactory to the trustee.

Q Had you consented to act as trustee at this time?

A No, I had not.

Q Had you refused?

A No. In the first place I wanted to see the document.

Q Did he show you some documents then?

A I don't know it was then or not, but later on I saw them. I am sure of that.

890 Q Do you remember meeting a Dr. Wehrli in New York sometime in the spring of 1960?

A In the spring of '60 -- yes, I think Mr. Schmitz brought Wehrli to my office in '60.

Q And what was the purpose of that meeting as stated by Mr. Wehrli?

A I frankly can't remember what the purpose of that was.

Q When did you first meet a Dr. Schaefer?

A I think the first meeting with him was when I went to Europe for consideration of the document and their offer of this trusteeship.

Q Where did that meeting occur?

A Paris.

Q Do you remember when that was?

A It was in '60, but I don't remember the exact date of it.

Q Do you remember the place of the meeting in Paris?

A It was a hotel.

Q Who was present at the meeting?

A Well, there were a number of trustees, I believe, of Interhandel, and of course I arranged for Mr. Spofford to go over and, of course, Mr. Schmitz was there.

Q Can you tell us what occurred at that meeting, what the discussions were in as much detail as you remember?

A Well, the discussion was largely of the document
891 establishing the trusteeship and explanations on, I guess, both sides as to why certain -- why the trustee wanted certain points very clear, and finally, Dr. Schaefer's statements sort of

clarifying the reasons for some of the things that were in the document establishing the trusteeship.

For example, I remember that he took considerable pains to explain that the Swiss felt it was not as much a question of the money involved, but that the honor of the Swiss and the Interhandel Co. were uppermost in their minds, but if it was done by the trustee, it must be understood it wasn't just monetary reasons. Their honor was at stake and this ought to be cleared up.

That is why he wanted, he said, the United States Government to turn the company back, turn GAF back to the Swiss. That was brought out time and time again in the discussion.

Q In other words, to turn it entirely back to the Swiss rather than ---

A And then proceed with selling it and so on, but turning it back would take any taint away from the original seizure of it, taint on it from the original seizure of the company by the United States Government.

Q Was there any discussion about the authority of the trustee to sell the GAF shares?

A Yes, he had -- the document gave the trustee to sell them, and I remember Dr. Schaefer made a big point of the fact that, again, that it wasn't the -- the monetary return was not nearly so important as the Swiss coming out of this thing with clean hands and all taint removed and he said -- and I

didn't understand it as well then as I do now -- but he said after the Government was satisfied and turned it back and they were satisfied with their take because there was something coming to them for services rendered, then the balance, of course, belonged to the Swiss. But he said that there would probably be claims -- he didn't care whether it was \$30 million or \$20 million, the trustee could satisfy those various claims and that would be perfectly all right with him. I remember that.

Q Did you understand what he meant by "those claims"?

A I didn't at the time fully, no.

Q Did he ever explain it to you further?

A No.

Q -- Was there any discussion as to the function of Robert Schmitz?

A Yes. At that meeting, not as much during the meeting, but when the meeting was adjourned, Dr. Schaefer came over and put his arm around Mr. Schmitz and thanked him almost vociferously for what he had accomplished and so on, and for the splendid document.

He gave him credit with respect to the trustee's obligations and duties and told me that "Mr. Schmitz is our man and
893 will continue to be, and I want you to look to him for all the information regarding the past of this case which you will need."

MR. O'DONOGHUE: May I have 47 and 48 please?

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you what has been marked Plaintiff's Exhibits 47 and 48 and ask you if you remember them.

A Yes, I remember these.

Q What are they?

A One is the extract of the minutes of the meeting of the Executive Committee of the Board of -- International Industrial and Handel -- I can't ---

THE COURT: Call it Interhandel.

THE WITNESS: I guess that means Interhandel.

BY MR. O'DONOGHUE:

Q Call it Interhandel.

A Interhandel, and it goes into very considerable detail on the investing of A.G. and so on; and the other one sets forth that C. E. Wilson has accepted the trusteeship, and goes on to explain what is expected of him and so on.

Q Did you accept at that time?

A No -- well, I don't know whether this -- what is the date of this? April 28. At the meeting in Paris I didn't accept. That is, I accepted provided certain things transpired. In other words, I wanted to go back and talk to people in my own Government. Then I would accept, and I ultimately did.

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894 Q Mr. Wilson, I show you Plaintiff's Exhibit 49, which is dated April 28, and is a letter to you from Dr. Schaefer. Was that delivered to you at the Paris meeting?

MR. WILSON: What is the number of that?

MR. O'DONOGHUE: 49.

THE WITNESS: I don't think this was delivered to me at the Paris meeting, but I remember the occasion when there was considerable excitement over the visit of this man Green who represented certain shareholders in the United States.

BY MR. O'DONOGHUE:

Q Why was there excitement over him?

A What's that?

Q Why was there excitement over him?

A Because they were making certain -- they were making certain claims of their ability to get this thing settled and so on, and finally Dr. Schaefer took exception to their operations.

Q Did it have any bearing on your acceptance of the trusteeship?

A No.

Q You didn't mind if they were active while you were trustee, is that it?

A The Green group?

Q Yes.

A Ultimately they became active again, yes.

895

THE COURT: Did you get the question, Mr. Wilson?

THE WITNESS: I didn't get it.

THE COURT: Did you mind if the Green group was active?

THE WITNESS: Well, at this early stage I didn't mind -- that this letter refers to, I didn't mind. In the first place, I didn't know enough about it at the time. Later on I took some exception to their getting into the matter, although I guess they had a perfect right to do it and they went to Colonel Townsend and so on.

BY MR. O'DONOGHUE:

Q Was there any discussion at the Paris meeting about compensation to you for your services?

A No, there was no -- beyond my statement to them that I wouldn't accept a dollar.

Q Was there any discussion of any kind about any compensation to Robert Schmitz?

A The only thing I can remember was with Dr. Schaefer and that was immediately after -- maybe it was before they adjourned, but they were all around in different places discussing what, I can't remember -- but Dr. Schaefer made very complimentary remarks to Mr. Schmitz and so on, and told him
896 that he would be well taken care of. Beyond that, I don't recall.

BY MR. O'DONOGHUE:

Q Did he say that was for services that had been performed or would be performed in the future?

A No, "for the job you have done."

Q Did you return to the United States after that meeting?

A Yes.

Q Who did you return with?

A Who did I return with? I can't remember.

Q Mr. Wilson, I show you Plaintiff's Exhibit 55 and ask if you can tell us what that is?

A This is a handwritten note that I gave Mr. Schmitz, I believe, that he was to notify Dr. Schaefer, that I accepted the mandate and the signed agreement will be airmailed to him, and also the suggestion that they release a statement by the Swiss to the Swiss newspapers of the appointment of the trustee. And in that announcement -- suggested announcement in the papers that they advise that Charles Spofford of the firm Davis and Polk had been selected by the trustee.

597 Q Do you know when that note was written?

A No, I don't.

Q There is no date on it.

A Stupidly it isn't dated, stupidity being on my part.

Q Well, approximately how long was it after you returned from Paris?

A Well, it was evidently in May. I have forgotten the exact date of the Paris meeting, but this was in May apparently of '60.

Q And did some time elapse between the date of the Paris meeting and the date of this note?

A Yes, there was a lapse of some weeks.

Q During the lapse of some weeks, what did you do in connection with this matter?

A Well, I went to Washington, and I saw some people in the Government, made it clear that I had accepted this trusteeship.

Q I am talking about before the acceptance -- did you take any particular steps?

A Say that again please.

Q Before you accepted and after you came back from Paris?

A When I came back from Paris, I told them I had concluded it. Up to that time I said I hadn't done it until I had
298 approval from my own Government for my doing it.

Q Did you obtain that?

A What?

Q Did you obtain that?

A Yes,

Q Up until your acceptance was there any discussion between you and any of the Interhandel representatives about publicity or secrecy?

A Yes. The only one that I recall about maintaining this on a very hush-hush basis had to do -- they didn't want their attorney, John Wilson, to know anything about it.

Q Now, upon your acceptance, what did you do next?

A Well, shortly after it -- the first thing I did was to get Spofford, my attorney, to go down and meet with the Department of Justice people, which he did, and began to make plans for the operation that we intended to carry through. But about that time, something new and upsetting came on the scene -- Senator Keating was talking about a bill -- putting through a bill that would cause the General Aniline and Film, which had been taken over by the Government, to be immediately sold to either a corporation or the stock sold and so on, so that it could be a fully privately owned company, and this was just at a bad time because we were just getting underway with trying to work out something quite different and get General Aniline back in its entirety for the Interhandel Co.

899

So I had to come down to Washington and get hold of Senator Keating and so on, and I asked him why he was introducing such a bill and found out that the main trouble was that he felt certain of the valuable parts of the property of General Aniline and Film were going downhill pretty fast in value

and one of them was the Ozalid thing -- you call it company -- which had at one time been a very lucrative business for them.

That had sunk to a low level, but he admitted to me that his main concern was the thousands of employees in their camera department and lenses and film were -- a number of people, I think it is at Johnson City, that plant, that it was shrinking, and in the interest of his constituents he wanted the business put into better hands, management than it currently was under the jurisdiction of the Government.

Well, I had just made a survey with the president of General Aniline and Film Co., Mr. Dinkins, trying to find out what they would think of my securing permission from the Alien Property Custodian to have the properties of the company and their business in general assayed by competent people, even to the point where I had discussed with Mr. Schmitz, and he with Dr. Schaefer, I believe, suggested that we employ the Guaranty Trust Co., their business department, to do it.

Well, I had the discussions with Mr. Dinkins, and to my consternation found that a beautiful array of cameras and

lenses which he had on display outside of his office -- and I
900 asked him about the quality of it and suggested the must have some fine researchers and designers to come up with this magnificent array of lenses and so on -- I asked him about the lenses.

He said they were better than German lenses, which are highly rated. Well, he said he had to admit that all of this equipment was made in Japan, and that they were just -- they had given up the manufacture of them substantially and they were just agents for Japanese, so when Kenneth Keating heard this story from me, he decided not to put his bill through, because it wouldn't do his constituents any good.

That was one of the first steps.

You say what else did I do? Then I proceeded to work with the Alien Property Custodian, Townsend, believing that we should have the right to make a check on all the properties to find out what the real worth of the company was for the future.

Q . . Before you go into that, Mr. Wilson, I show you what has been marked for identification Plaintiff's 141 and 142, and ask you if you remember what they were and what purpose they served?

A Well, this has to do with what I have just been talking about. This was at the time that this came up, and I decided to send these telegrams to these Senators, trying to get them not to go ahead with the sale of the property on the basis that they were going to sell it.

901 It disregarded entirely the General Aniline's desires in the matter -- I mean, Interhandel's desires and interests.

MR. O'DONOGHUE: I offer these, Your Honor.

THE COURT: Any objection?

* * *

THE COURT: All right, without objection they will be received in evidence.

MR. O'DONOGHUE: Both same date, August 30, 1961. 141 is to Senator Keating and 142 is to Olin Johnston and Everett Dirksen.

BY MR. O'DONOGHUE:

Q Mr. Wilson, aside from visiting the plant, did you take any other steps to familiarize yourself with the situation?

A Of GAF, in the United States?

Q Yes.

A Yes, I saw some knowing people, fairly knowing people about their various operations and tried to get a better understanding of where they stood in the various lines, but I was unable to get any information from anybody at the time as to the value of the -- I understood that their patent rights were valuable, but wasn't able to find anybody up to that point who
902 could tell me the condition of the patent rights, that is, how long they had to run or anything else, all of which might have made quite a difference in the overall value of the properties that we were talking about.

Q Did you regard the valuation of the company as important?

A Very important.

Q Why was that?

A Well, the extent of its importance came out when later that year, in a discussion I had with Colonel Townsend, he said he was even desirous of having this thing closed up, the whole matter, and would even subscribe to a 25 percent/75 percent settlement of a division of the proceeds, although in fairness to him I must say he qualified the 25 percent by saying to the -- the 25 percent to the Government must equal \$40 million, because that was the extent of the obligation of his department for what they had expended on General Aniline affairs.

At that time I told him I didn't think anything could possibly come from that kind of a proposed settlement, because we didn't know what the values were of the business as it stood today, or as it stood at that time. And I told him that I thought he ought to join me in arranging a survey and evaluation of the plants and the business generally, which he took under consideration.

But since he had made the rather definite offer of 903 25 percent provided it equaled \$40 million and 75 percent to Interhandel for their ownership of General Aniline, he said he would consider that part later. But in view of the importance of this, I immediately got in touch or had, I think, Mr. Schmitz handle it for me, with Dr. Schaefer and he sent Dr. Wehrli over and I outlined the offer of Colonel Townsend in all its gory details -- and both Mr. Schmitz and Dr. Wehrli, but Dr. Wehrli especially turned the thing down completely, reminding me that

Dr. Dr. Schaefer was not as much interested in the dollars involved as he was in having the thing restored in its entirety to take any taint off the Swiss, which seemed to have been bothering him right along. So that offer just went out the window.

Q Do you remember when this conversation took place?

A Yes, I think it was in December, just how late in December I can't remember. I think it was in December, 1960.

Q Then when was the meeting with Dr. Wehrli?

A It came quite quickly. He came over quite promptly after Mr. Schmitz told Dr. Schaefer of this offer by Colonel Townsend, why, I think a short time only elapsed before Dr. Wehrli arrived.

Q Turning back a little, did you shortly after accepting the trusteeship have any meetings with Mr. John Wilson?

A I don't know whether it was shortly after, but there came to be a meeting with John Wilson, you know, the "good Wilson," but I can't remember just how long after the trusteeship.

904 Q Do you remember how many meetings you had with him?

A I can only remember two, one there and one when the Green group got kicking up again later on and we were supposed to have a meeting with the Green group and Townsend and this Wilson, and to my amazement when I got there, the good Wilson was on the job and apparently running the meeting (indicating).

MR. WILSON: Can we clarify? He said "two meetings, one there." He didn't say where that meeting was.

THE COURT: Could you tell us where the two meetings were?

THE WITNESS: It was in Washington.

THE COURT: Both in Washington?

THE WITNESS: It was in Washington. Well, no, one of the meetings that I had with you was in New York in Spofford's office. Is not not correct, Mr. Wilson?

BY MR. O'DONOGHUE:

Q Mr. Wilson, during this period what part was Mr. Schmitz playing in the procedure?

A Well, this period he began to play a very important part because -- you may recall that the late lamented John Kennedy became our President ---

Q I mean before that. I mean in 1960.

905 A Before that? Well, he advised with me right along about these things, and I had to lean on him for all kinds of background information that I needed. He supplied it.

Q How often did you meet with him?

A Too often. Two or three times a week, and many telephone conversations.

Q Did you call him or did he call you or both?

A Both ways. He devoted -- nobody could have given more time to it and effort than ---

MR. WILSON: I move to strike that.

THE COURT: I will deny the motion. It is his expression of opinion.

935

BY MR. O'DONOGHUE:

Q During this period of June, 1960 -- Excuse me. Let's say to the end of 1960 did you have correspondence with Dr. Schaefer?

A I think only -- I can only remember possibly a letter that had to do with Dr. Wehrli's turn-down of the offer made by Colonel Townsend.

Q Was there -- Did Mr. Schmitz bring to your attention any correspondence that he had with Dr. Schaefer or Mr. Wehrli?

A Yes, when he had correspondence with them, he would come around with it.

Q Did you give him any instructions with regard to replies?

A With regard to what?

Q Replies to those letters.

A If I could be helpful I did.

Q Now, coming down to the end of 1960, you told us something of what occurred then. There was the presidential election in November, 1960, and therefore a change of

936 administration was in the offing.

A Yes.

Q Did you have any meetings with any members of the new administration?

A Not just at that time, no..

Q When did you have?

A Later on after we found out what they wanted through Mr. Spofford.

MR. WILSON: If the Court please, I don't know whether he learned this through Mr. Spofford or if he had meetings with the people in the administration through Mr. Spofford.

THE COURT: I gather from what you are saying, that is what Mr. Spofford told you.

THE WITNESS: That is right. You are right, sir.

937

BY MR. O'DONOGHUE:

Q What was undertaken then for the new administration?

A A very comprehensive review of the whole background case of G. A. F. and its takeover, etc.

Q How was that prepared?

A It was prepared under the direction of Mr. Spofford and with the very great help of Mr. Robert Schmitz.

Q Was any history of the case available prior to this time?

A I didn't know of any.

Q Did you have any conferences with Mr. John Wilson concerning the same?

A I don't think I did.

Q Now, did you receive any notice from Dr. Schaefer of any intention to come to this country about that time?

A I don't remember whether advices about his projected visit to Washington -- Somewhere, somehow I heard about it, but I don't remember whether it was word direct from Schaefer or through some other channel. I can't remember.

Q Did you invite him to come?

A No.

Q Did you want his help in meeting with the new administration?

A No.

Q When he came to this country, do you know approximately 933 when he first came?

A I believe it was around the middle of '61, but I have no record of the date.

Q Do you know how many trips he made to this country?

A I only know of that one and the one that he made later on when he made a deal with the administration.

Q Did you see him when he came to this country the first time?

A No.

Q You did not?

A No.

Q Did you see him when he came the second time?

A After he had been to Washington, I saw him, yes.

Q Can you tell us about your conversation with him at that time?

A Well, when I found out what he had done when he explained to my counsel and myself the deal that he had made, -- it was so contrary to the document that had been prepared where the trustees had sole authority to make a deal, and I pointed this out to him and so on I admit having been very greatly annoyed by his action.

MR. WILSON: Your Honor, may we have these adjectives left out?

THE COURT: No, I don't think so. I think he has a right to express his opinion.

939 THE DEPUTY CLERK: Plaintiff's Exhibit Number 143 marked for identification.

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you what has been marked Plaintiff's Exhibit 143 for identification and ask you if you can identify that letter?

A Yes, I remember this letter.

THE COURT: Without objection it will be received in evidence.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 144 marked for identification.

940

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you what has been marked as Plaintiff's 144 for identification and ask you if you can tell the Court what that is?

A Yes, I remember this letter.

941

THE COURT: Without objection it will be received in evidence.

BY MR. O'DONOGHUE:

Q Where did you see Dr. Schaefer when he came to this country on that occasion?

A When he finally came in.

Q When he finally came and saw you?

A I met him up at my club, the Links Club in New York.

Q And, did he tell you whether or not he had seen the Attorney General?

A Yes, he said that he had seen the Attorney General and made a deal with him.

Q Did he say what the deal was?

A Yes, it was nothing -- Well, the deal as I understand it was very similar to -- not in exact content, but the deal that he had turned down through his -- Dr. Wehrli a long time previous, had nothing to do with getting back all of the stock, the property to Interhandel -- nothing at all to do with it.

Q And, --

A Completely contrary to the terms of my trusteeship.

Q Now, had you solicited this trusteeship?

942 A Far from it.

Q Had you indicated at any time a willingness to resign if you were requested to do so?

A I don't remember that occasion arising? I can't remember anything of that kind.

MR. O'DONOGHUE: Mark this for identification, please.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 145 marked for identification.

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you Plaintiff's 145 marked for identification and ask you if you can identify that. Can you identify that, Mr. Wilson?

A Yes.

Q What is that?

A That is a letter I wrote Dr. Schaefer in March, '61.

Q March 27th, '61.

A That is right.

Q March 27, '61.

I offer this.

MR. WILSON: No objection.

THE COURT: It will be received.

943

BY MR. O'DONOGHUE:

Q What was the occasion of your writing that letter, Mr. Wilson? Do you remember?

A I believe it was written when I heard that Schaefer had come over here and disregarding the trustee had gone down to Washington and made some kind of an effort to get some kind of deal with the Department of Justice.

MR. WILSON: Is this letter dated '61 or '62.

THE COURT: '61. March 27, '61.

MR. WILSON: Thank you.

THE DEPUTY CLERK: Plaintiff's Exhibit 146 marked for identification.

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you Plaintiff's Exhibit 146 for identification and ask if you can tell the Court what that is?

A Yes, I remember this. It was a letter.

Q Just say who it is from and to?

A I wrote the letter to Dr. Schaefer with a copy to
944 Mr. Spofford.

THE COURT: What is the date of it?

MR. O'DONOGHUE: February 13, 1962.

MR. WILSON: No objection.

THE COURT: It will be received into evidence.

BY MR. O'DONOGHUE:

Q Mr. Wilson, referring to Plaintiff's Exhibit 146,
were you still acting as trustee at that time?

A I had not officially and definitely resigned.

BY MR. O'DONOGHUE:

Q Did you ever receive any notification from Interhandel
that your powers as trustee had been revoked by them or attempted
to be revoked?

A Not that I know of.

Q Did you ever receive any copy of resolutions of the
945 Board of Directors of Interhandel revoking your powers?

A No.

Q Did you ever hear whether any such resolution had
ever been passed?

A I never heard of such.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 147
marked for identification.

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's
Exhibit 147 for identification and ask you if you can tell us
what that is?

A Yes, this is a letter I wrote to Dr. Schaefer on
June 30, 1962.

Q Thank you. I offer this.

MR. WILSON: No objection.

THE COURT: It will be received into evidence.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 148
marked for identification.

946

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you what has been marked Plaintiff's
148 for identification and ask you if you can identify that.

A Yes, I recall this letter. It is my letter to
Dr. Schaefer, October 1, 1962.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 149
marked for identification.

BY MR. O'DONOGHUE:

Q Mr. Wilson, I show you what has been marked Plaintiff's Exhibit 149 for identification. I ask you if you can identify that.

A Yes, I recall this.

Q What is it, Mr. Wilson? It is a letter terminating
947 my trusteeship after having arranged certain things -- the payment by Interhandel to my attorney and a check of the account -- my account with Interhandel.

MR. WILSON: What is the date of that letter.

MR. O'DONOGHUE: October 1, 1962.

MR. WILSON: No objection.

THE COURT: It will be received.

BY MR. O'DONOGHUE:

Q Did Dr. Schaefer keep you advised of any of his activities during the winter or spring of 1962?

A No. He did not.

Q Did Dr. Schaefer or anyone else from Interhandel ever request your resignation?

A I don't recall any such request.

Q Did you have any telephone conversation with Mr. Orrick in 1962?

A I have forgotten now. I know there was a conversation with him, but whether it was with me or with Charlie Spofford, I don't remember.

Q You don't remember whether you had one?

A He was inquiring about the terms of the trusteeship and so on.

948

THE DEPUTY CLERK: Plaintiff's Exhibit 150 marked for identification.

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 150 for identification and ask you if you can tell us what that is.

A This I think contradicts what I said a moment ago. I apparently did telephone Orrick on January 23, 1962.

Q What is that?

A This is a memorandum of the telephone conversation with Orrick.

949

BY MR. O'DONOGHUE:

Q Mr. Wilson, I believe you say this does refresh your recollection?

A Yes.

MR. WILSON: Your Honor, I don't want to be sticky about this. If he wants to read the whole thing, he may do so.

THE COURT: You may read it.

THE WITNESS: Having been advised by a friendly source in Washington that negotiations between the Swiss interest and Justice Department will bog down to a considerable degree, I telephoned Orrick on January 23, 1962, and inquired about the progress in the case.

It is my recollection that his first reaction was that the opening up of the Swiss papers --

MR. WILSON: Excuse me, Mr. Wilson, will you? Your Honor, I did overlook one thing. I just heard it said in the 950 past tense. Can we develop this was written virtually immediately after the conversation?

THE COURT: Do you recall when you wrote that in relation to the telephone conversation?

A I do not.

THE COURT: Mr. Wilson objects. Do you want to be heard on it, Mr. O'Donoghue?

MR. O'DONOGHUE: I think it is fairly contemporaneous.

THE COURT: I will sustain the objection.

MR. O'DONOGHUE: All right.

THE COURT: Do you want it read?

951

MR. O'DONOGHUE: No.

Your Honor, at this time and without having them individually identified, I would like to offer a group of letters between the witness and Interhandel people that have all been examined by the defendant, many of which were furnished to us by the defendant, and just to put in for the record. I suppose they have to be individually identified, but maybe it would be simpler if I just showed them to them first.

MR. WILSON: I am sure there will be no controversy over it, but I would like to ask Mr. O'Donoghue would these be the ones that we handed you at the beginning of the trial.

MR. O'DONOGHUE: Some of them are.

MR. WILSON: That is all right. I want to use a great many of those, too.

THE COURT: I think the clerk should mark each one separately.

MR. O'DONOGHUE: I agree, but I thought before --

THE COURT: You don't need to have the witness identify them.

MR. O'DONOGHUE: That is what I thought.

THE COURT: Let's have them marked.

952

MR. O'DONOGHUE: I think we are all settled on the exhibits.

THE COURT: Can you give me the numbers of them?

MR. WILSON: She is going to make an announcement.

We are going to say we have no objection.

THE DEPUTY CLERK: Plaintiff's Exhibits 151 through 953 177 marked for identification.

MR. O'DONOGHUE: Very well.

THE DEPUTY CLERK: Omitting 164.

MR. WILSON: There is no number 164. We have no objection to any of them.

THE COURT: You are offering them in evidence?

MR. O'DONOGHUE: Yes, your Honor.

THE COURT: Without objection they are all received in evidence.

BY MR. O'DONOGHUE: Mr. Wilson, will you resume the stand, please.

(Mr. Wilson resuming the stand.)

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit Number 131 and ask you if you are familiar with that.

A I have seen it.

THE COURT: What did you say. I didn't hear you.

THE WITNESS: Yes, I said I have seen it before.

BY MR. O'DONOGHUE:

Q Was that prepared at your suggestion or not?

A It may have been prepared at Mr. --

954

THE COURT: No, the question was at yours.

THE WITNESS: Not mine.

BY MR. O'DONOGHUE:

Q When did you first see it?

A I don't remember. I don't remember.

Q Do you know what was done with it after it was prepared?

A No, I don't.

Q Did you give any directions as to its use or disposition?

A No, I did not personally.

Q Did Mr. Schmitz continue to serve you as trustee -- Strike that. How long did Mr. Schmitz continue to serve you as trustee in his capacity as assistant to you?

A Until I resigned, but then I saw him occasionally about matters that we had a common interest in.

Q I have no further questions.

955

CROSS EXAMINATION

BY MR. WILSON:

Q I want to call you the better Mr. Wilson. How is that?

A Coming from you that is all right.

Q Mr. Wilson, how many times did you see Colonel Townsend face to face.

A I think four.

Q And, were you alone on each occasion so far as you and Mr. Schmitz and Mr. Spofford were concerned or did any of these gentlemen accompany you?

A No, I think I was alone each time.

Q And, did Mr. Townsend -- Colonel Townsend as we used to call him -- did he have anybody present? Let's leave out the December meeting when you and I were present. We will talk about that separately. By the way, did you include the December 2nd meeting which I was present in the four times?

A I think so.

Q I take the other three times, Mr. Wilson. You say you were alone as far as your side of the case was concerned. Do you recall whether Colonel Townsend had anybody with him?

A I think on one occasion there was somebody with him. I don't remember who it was. It was somebody from his organization.

Q Do you remember meeting Mr. Paul Myran?

956 A It wasn't Paul Myron. That is not the name.

Q Now with respect to the 2nd of December meeting at which I was present, were these three meetings or any of them before or after that date?

A No, I think they were all before that date.

Q And, can you space them by some general approximation? I mean, were they a week apart or a month apart, a day apart?

A No. No, they were -- Two of them were -- Two of them were before Townsend resigned and one of them was considerably after that.

Q Now, let's back up a moment. Is it your recollection that Townsend resigned before the administration changed?

A No?

Q Or did he go out with administration?

A I thought he went out with the administration.

Q You and I have agreed that -- I think we have agreed that we were there together on December 2nd.

THE COURT: Is that '60?

BY MR. WILSON:

Q 1960, and your three visits were earlier than December 2nd. Let me orient you now. Is that pretty clear to you?

A That is about right.

Q Let's back up. Therefore, assuming that all of the meetings were ended with the December 2nd meeting, how soon after your assumption of these duties did you see him first?

A Well, the first time I saw him was very considerably before the December 2nd meeting.

Q You know that you --

A And, before I had the trustee powers.

Q You did see him before you had the trustee powers?

A That is right. Once.

Q Would you fix that generally in the year 1960?

A No, before that.

Q Earlier than '60?

A Yes.

Q You do remember, and you do agree with me, because I know you remember, that you assumed these powers sometime around the last week or near the last week of May, 1960, didn't you?

A '60, yes.

Q All right. Now, Mr. Schmitz testified and there is no dispute about it, that he saw Dr. Schaefer for the first time about October 26, 1959. Would you say that your first visit to Colonel Townsend was before that date?

A Yes.

Q Was it during the era that I called the Frey era, Dr. Frey --

A I don't know anything about the Frey era.

Q Let's you and I -- I won't use this phrase if you
958 don't like it. You did say Dr. Frey came over?

A That is right.

Q And, he was over here in '59, wasn't he?

A I believe so.

Q And, there came a time about the middle of '59 when he told you that Sturzenegger had sold out and he no longer had any activity in the area, did he not?

A I believe he -- I don't remember how expansive he was on the subject. He talked about this Sturzenegger era and so on.

Q You did know there came a time when he ceased to be contacting you, didn't he?

A When he ceased to?

Q Yes, sir.

A Well, sure, if he didn't contact me, I would know that he ceased.

Q Do you know why he stopped seeing you?

A No, I don't know why.

Q I see. Now, was it during the period when he was seeing you that you saw Dr. or Colonel Townsend?

A I don't know. It had nothing to do with my visit with him.

Q Some other subject matter?

A No, I mean nothing that came out of the meeting with Frey or anybody else had anything to do with some 959 investigation I made with matters I wanted to investigate with Colonel Townsend.

Q Well, did you always see Colonel Townsend upon the subject of the General Aniline Stock?

A On the whole, yes. Various phases of it.

Q Sir.

A Various phases of it.

Q And, you said that you saw him for the first time, as I recall you said it, before Bob Schmitz saw Dr. Schaefer in Europe?

A That is right.

Q And, I am trying to get some approximation of the time, and what prompted you to go to see him if it was before Schmitz's visit to Schaefer in October of 1959?

A Well, let's say that it had nothing to do with the contemplated -- my contemplated connection with Interhandel and so on, and therefore had nothing to do with this hearing.

Q Well, is that so?

A Yes.

Q Well, you went to talk to him about General Aniline, didn't you?

A Yes.

Q And, you didn't go to him in the interest of or in connection with Interhandel, is that right?

A Not the first time.

960 Q In whose behalf did you go to see him on the first occasion?

A That is my business.

MR. WILSON: Now, if your Honor please --

THE COURT: I am concerned about your answer, Mr. Wilson.

THE WITNESS: It has nothing to do with this case, sir.

THE COURT: You want to say about some matter unrelated to this case?

THE WITNESS: Unrelated to the --

THE COURT: Unrelated to Interhandel?

THE WITNESS: Unrelated to Interhandel, yes.

BY MR. WILSON: Not unrelated to General Aniline?

THE WITNESS: Unrelated to this case.

THE COURT: That may be a matter for the Court to pass on, Mr. Wilson. You were then being consulted about the possibility of your becoming a trustee.

THE WITNESS: No, it was before I had agreed to become --

THE COURT: Before you agreed to, but hadn't you been already/talked with about it?

THE WITNESS: I think it was well before I went over and was -- and they asked me to become trustee?

THE COURT: But, Mr. Schmitz had talked with you about it, had he not?

A THE WITNESS: Yes, he was the one that asked me to go over.

THE COURT: Wasn't it in relation to that that you went to see Colonel Townsend?

THE WITNESS: Having nothing to do with this situation. I mean, with Interhandel.

THE COURT: What about General Aniline?

THE WITNESS: Having to do with General Aniline -- an inquiry I remember I made of Townsend for the benefit of somebody who was considering buying General Aniline.

MR. WILSON: I insist upon an answer, your Honor.

THE COURT: Yes, I think I have to require you to answer, Mr. Wilson?

BY MR. WILSON:

Q In whose behalf did you go?

A What is that?

Q In whose behalf did you go?

A In behalf of wanted information from him and in behalf of one or all of the companies who had been trying to buy General Aniline.

Q And, did you go to see him after talking to Paul Davies?

A I don't know which one of them it was that wanted the information, and I tried to get it.

962 Q You did talk to Paul Davies, and --

A I talked to Paul Davies.

Q And Charlie Percy about Bell and Howell and Food Machinery interest in General Aniline, did you not, sir?

A I testified here earlier this morning and also in the interest of General Dynamics.

Q Well, all of these things occurred in chronological succession, didn't they? They weren't all pending at the same moment?

A No.

Q Right?

A That is right.

Q For example, you testified that you communicated with Mr. -- with National Lead on a number of occasions, didn't you, in behalf of Mr. Schmitz's interest in General Aniline?

A That is right.

Q And, what was your objective in inquiring of National Lead about General Aniline?

A I didn't inquire. I didn't inquire anything of National Lead. They inquired -- They were looking for information about General Aniline.

Q Did you accompany Mr. Schmitz to see some official of National Lead?

A I don't think I did. I think I went down to see the president alone.

963 Q You know know Joe Martino, don't you?

A Yes, sir.

Q You knew him long before you ever knew Mr. Schmitz?

A I guess so. I don't know.

Q And, you did go down to see him either with or without Mr. Schmitz, didn't you?

A Yes, I tried to answer some questions that were in his mind. These were on subjects which I thought I might be able to help him in view of the little experience I had with the General Aniline when I was with the W. R. Grace and Company.

Q Did you know then that Mr. Schmitz was negotiating for some contractual relationship with National Lead to help them get General Aniline when you went there?

A I don't remember.

Q And, what do you remember was the reason for your going there with Mr. Schmitz?

A I didn't go down with Mr. Schmitz. I just told you a moment ago I went down alone.

Q What did Mr. Martino tell you was his interest in General Aniline at that time?

A Say that again, please.

Q What did Mr. Martino tell you was his interest in General Aniline at that time?

A He wanted to find out more about it -- what did I know. He knew that Grace had done some investigating of it,

964 and I was there. Joe wanted to ask questions. That was all.

Q Was Bob Schmitz at that time communicating with you on the subject of his prospect to work for National Lead?

A I don't remember.

Q But, you do know that Bob Schmitz sought a contractual relationship?

A At some stage he did.

Q Wasn't it about this time?

A I don't know. I don't know.

Q Why don't you know?

A Because I don't remember. It wasn't of any importance to me at the time.

Q Now, the National Lead, -- Was the National Lead affair -- You only made one visit to Joe Martino's office, is that right?

A I don't know. I think I only made one.

Q It could have been more than one?

A Yes, but I don't remember.

Q After that -- Was it after that that you were talking to Paul Davies and Charlie Percy with respect to the Bell and Howell-Food Machinery objective?

A I don't know anything about the Charlie Percy Food Machinery thing. The Food Machinery thing was an entirely separate thing with Paul Davies I communicated.

965

Q Did you ever discuss with the present Senator Charles Percy, who was president of Bell and Howell --

A Did I ever what?

Q Discuss with him the subject of acquiring General Aniline?

A I don't think so. I don't remember that at all.

Q You did discuss with Paul Davies --

A Yes.

Q The accusation of General Aniline - by Food Machinery, didn't you?

A Sure.

Q You knew that Bob Schmitz was talking to Paul Davies about this subject?

A Sure, that is right.

Q Did there come a time that you had lunch at the Pinnacle Club with Mr. Davies and Mr. Percy and Mr. Schmitz in which General Aniline was the subject of discussion?

A I don't remember the Percy connection at all.

Q Do you remember being at the Pinnacle Club with Mr. Schmitz and Mr. Davies?

A No, I remember being at maybe it was the Pinnacle Club and some others, with Paul Davies many times, but I don't remember whether Mr. Schmitz was there or not.

Q Now, as a result of one of the meetings with Paul Davies, you went to see Colonel Townsend, is that right,

966 sir?

A I think the information Paul was looking for that I probably saw Townsend once.

MR. WILSON: Would you read that back?

(The reporter read the answer back as requested.)

BY MR. WILSON:

Q Do you remember what the information was, sir?

A No.

Q Do you remember why you went to Townsend -- Strike that. Had you known Townsend before that visit?

A Yes.

Q Where had you met him before that visit?

A I met him in Washington somewhere. I don't know.

Q I see. Now, do you know why you went to see Mr. Townsend instead of Mr. Davies going to see Mr. Townsend?

A No.

Q Sir?

A No, I don't know.

Q And, do you remember what was the outcome of the discussion with Mr. Townsend over the subject of General Aniline?

A No.

Q Do you remember whether you disclosed to Colonel Townsend that you were there in behalf of Food Machinery and Paul Davies?

967

A No, I don't think I disclosed that.

Q You don't remember what your inquiry was?

A No, I don't.

Q Did you get a satisfactory reply?

A I don't know. I guess I would have to ask Davies.

I don't remember what the reply was.

Q Thank you.

A This was a matter of very little moment to me, I assure you.

Q Did Bob Schmitz know you were going to see Colonel Townsend at Mr. Davies' request?

A I don't know.

Q Sir?

A I don't know.

Q You mean you don't recall?

A No.

Q I see. Now, that would be the first visit you had with Colonel Townsend, wouldn't it?

A Yes.

THE COURT: What did you say?

THE WITNESS: I said yes.

BY MR. WILSON:

Q Now, I would like to account for two more visits before we get to the December 2nd visit. You assumed your powers about the 23rd of May, 1960. Was your next visit to

968 Colonel Townsend after the assumption of your powers or before?

A It was after the assumption.

Q And, on that occasion was anybody present with Colonel Townsend?

A No. I was surprised you weren't there, but you weren't.

Q I don't guess I knew about it or I might have been. Do you remember what was discussed?

A Yes.

Q Sir.

A Yes, I do.

Q What was discussed?

A The long case which had been stringing along for years and Townsend was anxious to get it cleaned up and get out and so on. It was quite a lengthy conversation.

Q Did you tell him on that occasion of your trustee powers?

A I imagine I must have by that time.

Q Now, then, there would be another meeting. Was that pretty soon after you became trustee?

A Which one are you talking about now?

Q The one that was first had after you became a trustee. How soon? Was it soon afterwards?

A It was a matter of a few months.

Q A few months?

969

A Yes.

Q Now, do you remember the occasion of the third visit to Townsend which would have to occur before the second of December?

A The third visit was the December second meeting. I mean, that was the meeting at which he made the proposition.

Q You said there were four visits in all.

A One of them was afterwards, after this, after he made the proposition to me.

Q How long after he made the proposition?

A Well, you know how long it was. You were at it.

Q No, I think you and I -- You are confused or I am confused. We were present at the December 2nd meeting, and you have testified that all three of your other meetings were before December 2nd, Mr. Wilson.

A All right. December 2nd what? 1960?

Q That is right. '60.

A '60?

Q Yes.

A That was the meeting you were at with the Green group?

Q Yes, sir.

A Well, it was before that that I had the meeting with Townsend at which he made a definite offer of settlement.

Q Didn't you say a couple moments ago that he made the

970 offer of settlement at the meeting at which I was present?

A No, you weren't present.

Q You didn't mean to say that?

A No, I said -- You wanted to know if anyone else was there. I said I had expected that you would be there, but you weren't. I know your connection.

Q Let's go back now and get this thing sure. You saw him four times in all, didn't you?

A I think so.

Q And, the last time that you saw him was the meeting which I attended --

A That is right.

Q Which is a matter of record the 2nd of December.

A All right.

Q Okay. Now, you have accounted for a first meeting at the instance of Paul Davies. Prior to October of 1959 you have accounted for a second meeting sometime after you assumed your powers, one subject of which very likely was that you informed him of your powers.

Now, there is a third meeting that occurred before December 2nd. My question is when did that occur?

A I don't remember. I don't remember the date, but it was between the two, and it was the meeting -- the one before the December meeting was the meeting at which he made the definite offer to take 25 percent or 40 million dollars

971 and give Aniline or give Interhandel 75 percent.

Q You repeated again what you said on direct examination. This was a definite offer, was it?

A Yes, he said he would settle on that basis.

Q All right. Did you report this in writing to Switzerland?

A I don't remember how we reported it. I testified, if you remember, that when Schaefer got word of it -- I have forgotten just how he got the word -- he immediately sent Dr. Wehrli over and Wehrli came to my office with Bob Schmitz. I explained what could be done, admitted that it was not -- didn't fully take care of the points that Dr. Schaefer had told me they honor and so on of the Swiss, but it was financially it sounded like a good offer.

Q Do you remember writing to Switzerland a full report on the meeting that I attended on December 2nd?

A I probably notified them of it.

Q Did anything occur after the meeting that you had alone with Colonel Townsend and which he made you a definite offer of 75 percent for the Swiss. Did anything occur whereby Colonel Townsend revoked that in his discussion with you and in effect changed his mind?

A No, he didn't take it back, although he objected to my demand that I have capable people make an evaluation of G.A.P. properties.

972 Q By the way, Mr. Wilson, the plan to have Morgan Guaranty make an appraisal of this property, was never effectuated, was it?

A No, because Townsend said he wouldn't permit it.

Q All right.

A That is why I backed off from any consideration of his 75 percent offer.

Q Now, on the second of December, who was present there with you and me?

A There was a young lawyer -- Spofford was away, but --

Q Young Sam Pryor.

A Sam Pryor was there. And, there were two or three members of the so-called Green group.

Q David Green himself was there, wasn't he?

A Green was there.

Q He had a lawyer from White and Case, didn't he?

A I don't know. I don't remember where the lawyer came from.

Q Now, at that meeting, was there any mention of percentages?

A Yes, there was mention made, as I remember, by the Green group, and they were all in favor of -- I think -- Yes, I think a member of the Green group, knew about the 25 -- 75 percent offer, not the 40 million tacked on to the Government's demand for the 25 percent, and they were highly

973-974 in favor -- the Green group was highly in favor of that thing being gone through with.

Q At that meeting of which I was present, and I was present throughout, wasn't I?

A Oh, without question.

Q Do you remember any member of the Green group or their representative in effect throwing in the face of Townsend the 75 percent offer?

A No, I don't. I think the Green group, as I recall that meeting as it progressed, the Green group's gripe was entirely at me because I wouldn't go ahead and try to put that offer through until I had made an evaluation of the property. This the Green group didn't give a hoot about, and they were very angry with me. They came up on the plane with me and they raised mischief with me all the way up to New York.

975

BY MR. WILSON:

on

Q Now, you say that/a meeting earlier with Mr. Townsend he had made you a definite offer of 75 percent with 25 percent retained by the United States Government, provided the 25 percent amounted to \$40 million?

A That's right.

Q Was that a mere suggestion in conversation or was it a definite offer?

A I don't know how to distinguish between the two. This is what he said: "This is the way I would like to settle it," said he.

Q Did you regard it as a firm offer?

A I regarded it as a firm offer because, you recall the testimony, I immediately had Schaefer notified, and he immediately sent Dr. Wehrli over, and they were "thumbs down" on it, didn't want any part of it.

Q Do you remember ever describing this conversation with Colonel Townsend as involving only a suggestion?

A No. No, I don't remember.

Q Do you remember my taking your deposition in New York on February 27, 1968 in Mr. Spofford's office?

A Yes.

Q I want to read you and ask you if you remember that I asked you these questions, and that you made these answers --
976 and I am reading from page 31 of the transcript of your deposition:

"Q Then to crystallize this whole thing, your testimony is that you never received a firm offer from the U. S. Government to settle the Interhandel case; is that correct, sir?

"A That I personally did not, no.

"Q Or Mr. Spofford?

"A I don't know. I am not answering for Charlie Spofford. He is going to be---

"Q Or Mr. Pryor?

"A I don't know. I don't know. I can't answer for them. But I personally did not receive a specific offer. I received a specific suggestion of consideration from Dallas Townsend, but that's all.

"Q Was that for 75 per cent?

"A I can't remember now. I have got a record of it, but I can't remember it now. I can't remember the figure.

"Q Did you ever meet with Dallas Townsend when I wasn't present?

"A Strangely enough, yes. I am surprised you ever let me do that.

"Q And you have records of these meetings with Mr. Townsend?

977 "A I have one record of one meeting at which we had a very considerable discussion of the thing, yes.

"Q And have you looked at that lately?

"A No, I don't know where it is.

"Q You have no idea what it contains as to what the conversation was between you and Mr. Townsend?

"A Oh, I remember what the conversation was.

"Q What was it?

"A Oh, I am not--I am not here, we are not here for that today, are we?

"Q Yes, we are here for that today.

"A Well, all right. I'd have to refresh my memory by my record.

"Q Were other people---

"A But it had nothing--it was not specific as to an amount that they would take. It was not specific. It was a suggestion."

- - -

Do you remember that I asked you those questions and you testified on that deposition?

A Sure, sure. It just messes up the whole thing, the way you put it. What's the difference between--- He was suggesting a way, something that they would accept and I knew of the difficulty of getting that over, so I didn't ask for a specific order in writing, and it wasn't specific, I think in any way, because he wanted 25 percent, he mentioned 25 percent or \$40 million, so that wasn't a specific order. It had two tails to it.

Q Do you remember the testimony that I read you about?

A No, I don't remember -- didn't pay much attention to it.

Q Do you think it was inaccurately reported?

A As you read it?

Q Yes.

A I don't know.

Q Sir?

A I don't know.

Q Do you want to reserve the position that it was not correctly reported?

A No, no, I am not taking that position at all. You're the one that's asking this silly question about it.

Q I want to read you from page 29 of your deposition which is just prior to what I did read you, when I asked you these questions, and ask you if you recall making these answers:

"Q But your answer still stands to my question that you were never made an offer by the U.S. Government?

"A I was not, but maybe somebody else was.

"Q Do you want to tell me who that was?

979

"A When you get through with your next witness, why, maybe he will tell you. I don't know."

Do you remember those questions being asked and those answers being given?

A No, no, I don't remember.

Q Do you question the accuracy of this report?

A I don't remember that I said it. That's not questioning the accuracy of it. Maybe it's right. I don't know.

Q Thank you, sir.

A I didn't get an order from, an offer in writing, or notarized, or anything else. I suppose that's what I should have to satisfy you.

Q I want to show you Mr. Schmitz's Exhibit No. 161 -- and you have already identified that as a letter you wrote to Dr. Schaefer on December 19, 1960, reporting on the December meeting that I attended. I think you gave the date of that meeting as December 3th in there, but it, obviously, was a meeting which I attended because you gave me credit for being present.

Would you look on the last page of that letter, if you please? First, let's establish when was that letter written?

A It was written December 19th, and it refers to a meeting on December 2nd.

980 Q All right. Would you turn to the last page and read the last paragraph? Read it aloud, will you, Mr. Wilson?

A "While no one here is happy with the course which the meeting followed, it is possible some benefits were achieved. For one thing, it should be plain to the Department that I do not intend to recommend a proposal which remotely approaches Colonel Townsend's 50-50 position. Secondly, it

may be that Keating has been persuaded that a settlement of the dispute will more effectively serve his constituents than his bill. Finally, we are hopeful that Colonel Townsend can now be persuaded to the importance of providing the necessary information to Morgan Guaranty. Charles Spofford intends to call upon Colonel Townsend at an early date to press this point."

Q Now, would you go back to the reference to Townsend's 50-50 offer, and tell his Honor why you made that reference in that letter of December 19th, having had no other meetings with Colonel Townsend to the 50-50 offer of Colonel Townsend?

A I don't know that I get your point. Why I refer to 50-50 instead of 25---

981

Q --75?

A Well, because of--- It may have been. I don't know. But I had already told them what Townsend's offer was. They knew it was 25 or 40 million -- 25 percent or \$40 million.

Q Then, why did you refer to 50-50?

A I don't know. I couldn't tell you. I think it's a typographical error that I should have caught, or it may be that giving them 40 million made it 50-50. He demanded 25 percent or 40 million.

Q Did you ever receive anything which remotely approached an offer after the Kennedy Administration came in?

A Personally, I think not. Charlie Spofford had some conversations, but I don't know. I can't recall the extent of them or much about them.

Q Except for the telephone call to Mr. Orrick in January of '62, did you have any communication---

THE COURT: '62, was it?

MR. WILSON: Yes, your Honor.

BY MR. JOHN WILSON:

Q --did you have any communication with any official of the Department of Justice on the subject of settling this case after the Kennedy Administration came in?

A After the Kennedy Administration came in -- no, 982 indeed there was no effort made that I can recall because an agreement had been made to furnish this mass of detail they wanted before they would consider.

Q What was the mass of detail?

A The case from the beginning, that involved Mr. Schmitz.

Q Oh, you mean the narrative, the history of the case?

A The narrative -- Yes, it was a narrative report.

Q So, you don't recall any contact with anybody in the Department of Justice other than Mr. Orrick's telephone call?

A That's right.

MR. JOHN WILSON: Excuse me a minute, your Honor.

BY MR. JOHN WILSON:

Q In the deposition you referred once or twice to the fact that you would have to refer to your notes. Do you have notes on these subjects?

A I did have them.

Q Sir?

A I did have notes on them.

Q Do you now have them?

A I may have some of them. I may have thrown some in the garbage. I don't know.

983 Q Have you seen within the last month any of your notes?

A Notes that I made?

Q Yes, sir.

A Yes, I have seen some few notes.

Q Have you any notes concerning the meeting with Colonel Townsend at which he made you this something about 75 percent?

A I don't think I have.

Q Did you have any notes about the December 2nd meeting which I attended?

A I think not.

Q What notes have you looked at in the last month which relate to any of your testimony in this case?

A I can't remember.

Q Did you bring any with you?

A I may have some; I may not.

Q Did you give any to Mr. O'Donoghue?

A I think not.

Q Did you show any to Mr. O'Donoghue?

A I did not show him any notes, no.

Q Did you show them to Mr. Schmitz?

A Did I what?

Q Show them to Mr. Schmitz?

A I think not.

Q Are these in longhand?

A I don't know.

Q You may have brought some to Washington with you, sir?

A I may have some.

Q Before lunch, you were shown a letter from Dr. Frey to you, of March 10, 1959, the first paragraph of which refers to your negotiations with Mr. Rogers.

A With whom?

Q Mr. Rogers, the Attorney General.

A Oh, yes.

Q And you testified it was about the General Aniline case. Would you mind telling me what was the whole of the subject?

A Yes. The whole of the subject was the General Aniline case and its connection with Aniline ownership which had been taken away from it; but the point of the whole thing was just how -- to find out from Rogers just how he would feel if I accepted a trusteeship that had the Swiss on one side suing my Government, and just how they would feel if I went in and took this trusteeship from the Swiss and try to help them come out on top.

Q What did Mr. Rogers say to you?

A He told me that he thought it would be all right, to go ahead.

985 Q And you were having some correspondence with Dr. Frey about this, weren't you?

A I don't know -- whatever that letter said.

Q This is referred--- I'll show it to you again.

A All right.

Q Number 17-A is a copy of Dr. Frey's letter to you.

A (Witness read exhibit) Yes, I remember this now.

Q And you apparently were in contact with the common friend at that time, who was Robert Schmitz, too, weren't you?

A That's right.

Q Did they both know that you were going to the Attorney General to sample his attitude toward your coming into the matter as a trustee?

A I don't Frey did, but Bob knew that I was going to be sure that the Government was satisfied to have me take this step.

Q Did you report back to Bob Schmitz that you had seen the Attorney General upon this subject, and he was quite agreeable to your---

A I surmise I did. I don't recall it, but I surmise I would have. I don't understand this thing about some "man with a corporate and personal interest implicating. . . ." I don't know what that is.

936

Q I'm not asking you about. But you are clear---

A I just wanted to be sure.

Q You are clear that the reference in this letter as to your visit to Mr. Rogers was as to whether you could undertake some sort of a trusteeship in the General Aniline case for the Swiss, without offending the United States Government?

A That's right, that was the purpose of my inquiry.

Q Your seeing him. Did you ever see him again on the subject of General Aniline?

A No, I did not. I didn't want to get messed up--- Charlie Spofford handled the thing once he got on the job, and I didn't want to get crossed wires.

Q Did you ever make another visit to the Attorney General to sample his attitude, where the subject of General Aniline was somehow involved?

A I think not.

Q Now, you did see the Attorney General the day that you and I went to see him, didn't you?

A What's that again?

Q You did see the Attorney General on December 2nd, when you and I saw him together, didn't you?

A When did we see him together?

Q After the Townsend meeting.

937 A I don't remember that we saw him. I don't remember we saw him that day at all.

Q I know these things are a long time ago, Mr. Wilson, and I don't mean to belabor it, but look at this report of the 19th of December, at the bottom of the second page and see if that doesn't refresh your recollection that we saw the Attorney General together?

A (Witness read document) My error.

Q Do you remember now?

A What?

Q Do you remember it now?

A I don't. To be perfectly honest with you, I don't. It made no impression on me.

Q Earlier-- Excuse me. Go ahead.

A It goes on to say that we got nowhere. We just said some "Hello's" and "Good-bye's," so I guess I didn't remember that. That probably loomed larger in your mind than mine.

Q You sought to see the Attorney General earlier -- and by that I mean Mr. Rogers -- and he declined to see you, didn't he?

A Originally, yes.

Q And, as a matter of fact, did you ever speak to Mr. Rogers upon the subject of General Aniline?

938 A I have just testified to that about three times so far in the last hour.

Q The March 10th visit, or thereabouts, when you went there, I understand that. Other than that visit and the time that you now are refreshed that you and I saw him together in December of '69---

A Yes.

Q --did you ever see the Attorney General?

A No, no. It was agreed that Spofford would handle the thing with Rogers' assistance.

THE CLERK: Defendant's Exhibit 17 marked for identification.

(Defendant's Ex. 17 marked.)

BY MR. JOHN WILSON:

Q Look at Defendant's Exhibit 17 for identification, which is a copy of your letter of August 11, 1960, to Attorney General Rogers, and see if that doesn't refresh your recollection that he declined to see you?

A (Witness read exhibit).

THE COURT: To clarify something for me, was Mr. Rogers the Attorney General at that time?

MR. WILSON: Oh, yes.

THE COURT: What year was it?

MR. WILSON: 1960.

939

MR. WILSON: Did I give another year? Does that say 1960?

THE WITNESS: Yes.

THE COURT: Very definitely he was at that time.

BY MR. JOHN WILSON:

Q Does that refresh your recollection that you sought an audience with him, and he would not see you?

A Originally, he did not want to see me; yes.

THE COURT: Mr. Wilson, I'm sorry, we are going to have to adjourn at this time.

MR. WILSON: Can I offer this in evidence before you go?

I offer in evidence Defendant's Exhibit No. 17, your Honor.

MR. O'DONOGHUE: We have no objection.

THE COURT: Without objection,
It will be received in evidence.

(Defendant's Exhibit No. 17 was
received in evidence.)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

ROBERT A. SCHMITZ,

Plaintiff,

v.

SOCIETE INTERNATIONALE,

Defendant.

CIVIL ACTION 85-67

Washington, D. C.

Wednesday, January 14, 1970.

VOLUME VIII

(Pages 991 - 1077)

Defendant's Copy

MARIE S. TAYLOR
Official Court Reporter
Room 6812, U.S. Court House
Washington, D. C.

993

MR. WILSON: May I resume the cross-examination of Mr. Schmitz?

THE COURT: Yes.

994

CROSS-EXAMINATION (Continued)

BY MR. WILSON:

Q Mr. Schmitz, do you remember when I was discussing with you on Cross-examination, the element of the enemy taint, do I recall correctly that you volunteered that that came into the Supreme Court decisions in a Minority Opinion?

A Yes, I recall that I said that; as part of the American Ubersee-Fritz von Onel case, Mr. Justice Jackson, as I recall, had mentioned the possibility that taint -- whatever it was -- might be sufficient grounds upon which the Government could justify retention or sequestration of the property.

Q Were you in a certain sense minimizing the importance of taint on the grounds that it came out of a Minority Opinion?

A No, I just stated what I said, that I recall that it was part of the Fritz von Onel American Ubersee opinion, and I recall that I said that Mr. Justice Jackson apparently was part of that Minority opinion.

Q Mr. Schmitz, you know, time plays tricks with all our memories.

A Surely.

995 call the Second Ubersee case -- this is in 1952, Ubersee Finanz-Korn v. McGrath, who was then Attorney General. This opinion was written by Mr. Justice Minton, and there is no Minority Opinion here -- and it refers back to Clark vs. Ubersee Finanz-Korn, which was the earlier opinion on the Ubersee case. And I would like to read you the---

MR. O'DONOGHUE: Oh, certainly, Mr. O'Donoghue. The one I am reading from is 343, U.S. and the first page of the opinion is 205 -- this is the '52 opinion -- and at the moment, I am going to read from page 212.

Before I read from page 212, I would like to give you a citation, because it only says Supra on page 212, to the earlier opinion. Clark vs. Ubersee Finanz-Korporation is in 332 U.S. at page 480.

Mr. Schmitz, just to sharpen up your memory about this a little, I am on page 212 of a unanimous opinion in the Second Ubersee case, in which Mr. Justice Minton says -- and I wonder if you would follow me on this.

A Surely.

Q "As construed by this Court in Clark vs. Ubersee Finanz Corporation, A.G., Supra, Section 2 included in the word 'enemy' all corporations affected with an 'enemy taint.' Since we find Petitioner to be so affected because of the direct

996

"and indirect control and domination by an enemy national, Wilhelm von Opel, Petitioner cannot recover under Section 9 (A)."

Does that now sharpen your memory that it was the unanimous opinion of the Supreme Court?

A It tells me what it says, what it says there right now.

Q Thank you.

MR. WILSON: Would you like to peruse this?

MR. O'DONOGHUE: Thank you, not now, Mr. Wilson.

BY MR. WILSON:

Q In your following of the affairs of Interhandel and the litigation over the years, Mr. Schmitz, did you have occasion to examine the 18,000-page record which went up from Judge Laws' decision of dismissal to the Court of Appeals?

A No, sir.

MR. WILSON: Would you mark this with our next number -- A, B, C, and D, in the order of the numbers of the volumes, 1, 2, 3, and 4?

THE CLERK: Defendant's Exhibit 18-A, -B, -C and -D marked for identification.

Q Mr. Schmitz, a record was printed in the Court of Appeals, or did you know a record was printed in the Court of Appeals in the appeal from Judge Laws?

997

A I know that there was an appeal and that records are printed in such appeals.

Q And you know that we lost in the Court of Appeals, and eventually---

THE COURT: When you say "we," you mean Interhandel?

MR. WILSON: Yes, sir.

BY MR. WILSON:

Q --and that we eventually got certiorari, don't you?

A Yes, sir.

Q I want to show you four volumes of the transcript in the Supreme Court, in Number 348, October Term, 1957,---

MR. O'DONOGHUE: Which exhibit is this?

MR. WILSON: In 18-A to -D inclusive.

BY MR. WILSON:

Q (Continuing) --which bound together the printed record in the Court of Appeals in number 12 140.

I ask you if you had occasion to examine those four volumes?

A No, sir.

Q Did you learn that I had supplied a set of those to Mr. Spofford?

A No, sir.

Q You are unfamiliar with the contents of this record,
998 sir, are you?

A Per se, I would not say that. I am not unfamiliar with all of the contents because over the years I had repeated discussions with you and---

Q Let me turn it around. I probably misled you in my question.

A Yes, sir.

Q You're unfamiliar with that which is contained in this record?

A I wouldn't say that at all.

Q I mean what is in the printed page-- Are you familiar with the fact that something is on a printed page of this record?

A No, sir.

THE COURT: What I understand him to be saying is, there may be facts within the printed record with which he is familiar.

MR. WILSON: That's^a/perfectly understandable answer.

BY MR. WILSON:

Q I'm trying to say, whether he is familiar with whether they are contained in this record.

A I couldn't say that at this moment.

MR. WILSON: If your Honor please, for orderliness' sake, the Court may take judicial notice of these four records. On that account, I offer them in evidence at this
999 time.

* * *

THE COURT: Without objection, they will be received in evidence.

BY MR. WILSON:

Q Mr. Schmitz, in your Complaint, in the First Count of your Complaint, in paragraph 14, on page 8, you allege, that "as a result of Mr. Wilson's negotiations, an offer was made by the Department of Justice in 1961 to pay 75 percent of the proceeds of the sale of the stock of GAP to Interhandel, and 25 percent to be paid

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"to the United States."

Now, your counsel did not ask you about that phase of the testimony. Do you today reaffirm that allegation of your Complaint, sir?

A Yes, but based upon the--- That allegation is there on information and belief from information that I obtained from Interhandel's trustee, and the fact that the sovereign does not make offers, but suggests they will entertain offers is the substantial difference that I would put on it.

Q You remember, we were talking about '61 and not '60.

A Well---

Q --and you went on to say it was from Orrick, et cetera.

A Yes.

Q You have heard the testimony in the courtroom here -- you have been present throughout or nearly throughout -- do you still assert to his Honor that you were informed by Mr. Wilson that in the summer of 1961 he received an offer from the Department -- he had a definite understanding with the Department of Justice that they would give 75 percent to Interhandel?

A No. Based upon what I have now heard in the testimony, it was 1960.

1001

THE COURT: It was what?

THE WITNESS: It was 1960 instead of '61.

BY MR. WILSON:

Q Oh. You remember my taking your deposition in February of 67, do you not?

A March of '67.

Q March of '67.

A Yes.

Q You remember, I questioned you very much on this subject of the definitiveness of your testimony, that such an offer had been made in 1961, and you stood by it, didn't you, sir?

A Yes, sir.

Q And you were present when I took the deposition of Mr. Spofford in New York, weren't you?

A Yes, sir.

Q And he would not confirm that, would he?

A No, sir.

Q And so, now, you are telling his Honor that you have changed your mind about the time of such an offer, and that it did not occur in 1961?

A I have not changed my mind. I am only saying I have been present in this courtroom, and I have heard the testimony presented, and I know there was one in 1960; and upon information and belief, I also put in my complaint my
1004 hope would not be involving the evaluation and audit, and this offer would be 75 percent for the Swiss principals, or beneficiaries of the Trustee, and 25 percent for the Government, provided the 25 percent was at least \$40 million.

Q Now, what was the source of your information about that?

A I had two sources: The trustee and also Mr. Sam Pryor with whom I conferred after that and also---

Q Thank you. Now, you were saying---

A (Continuing) -- and also I was in conference with Mr. Spofford and the Trustee.

Q You are saying, in effect, that the incident, when this occurred which you have just recited to his Honor, was at the December 2nd meeting, when Mr. Sam Pryor was present; is that right, sir?

A No, after the December 2nd meeting.

Q Are you suggesting that there was another meeting attended by Mr. Wilson with Mr. Townsend and Mr. Pryor after December 2nd?

A No, sir.

Q You mean you were told after December 2nd?

A No, no. We had meetings involving Colonel Townsend as late as December 27, 1950 into January.

Q Let's break that down: "We" had meetings. Who had MEETINGS?

1005 A Mr. Spofford, Mr. Pryor, Dr. Ulrich Wehrli, the Trustee, Mr. Charles E. Wilson, and myself.

Q Were you present?

A Yes, sir.

Q Then, Mr. Wilson's recollection yesterday that he had no meeting with Colonel Townsend after December 2nd meeting is wrong, sir?

A No, sir. It's correct. Mr. Spofford had the meetings. He went down to Washington to see Colonel Townsend for his client, the Trustee.

Q You remember Mr. Spofford testifying on his deposition, at which you were present, in which he said he never received an offer of 75 percent, don't you?

A He didn't receive an offer. He was asked to make one.

Q And when did this take place, sir? Were you present at this?

A At what?

Q When he was asked to make an offer.

A I was present in the Trustee's office and with Mr. Spofford and Pryor and Dr. Wehrli when we discussed this.

Q No, I'm not asking that. Were you present at Mr. Townsend's office?

A No, sir.

1006 Q Would you say a few moments ago that sometime after the December 2nd meeting you were present in Mr. Townsend's office?

A Never said that, no, sir.

Q Well, let's straighten it out. Have you ever been in Mr. Townsend's office?

A No, sir.

Q All right. So, anything that ever happened in Mr. Townsend's office you had to get it from somebody else, didn't you?

A It was given to me by Interhandle, your client's trustee.

Q And as I understand it, this proposal of 75 percent, which the Alien Property Custodian urged Interhandel's trustee to make, was not made to Mr. Wilson, is that correct, sir?

A Oh, yes, it was made to Mr. Wilson.

Q Was he present?

A Mr. Wilson?

Q Yes.

A My understanding---

Q --after December 2nd?

A No, no. He was on the telephone with Colonel Townsend.

1007 Q Was anybody else on the telephone with him?

A You would have to ask him.

Q Did he ever tell you whether they were or not?

A He told me that he talked to Colonel Townsend during that period, and he also told me that Mr. Spofford was going down to Washington. We had a meeting prior to Mr. Spofford's going down on December 27th, and he told me he had talks with Colonel Townsend and he told me he had meetings with Mr. Dinkins, president of Aniline, and that Colonel Townsend had moderated and was not ^{really} firmly against the matter of the appraisal at the end of December, and that it had been more or less a personal matter, and that Colonel Townsend was limited in the time before he would go out of office, and it was a question of the mechanics of getting the audit. And Mr. Dinkins had a meeting with Mr. Charles E. Wilson for the purpose of the Trustee's getting an idea of the value, and Mr. Dinkins told Mr. Wilson---

Q Wait a minute.

A (Continuing) --that the profits were \$9 million.

Q This is not responsive to my question. Please
decist.

A Oh, I'm sorry.

Q With respect to the December 2nd meeting that Mr.
Pryor and I attended in Colonel Townsend's office, can you fix
1008 the time of the telephone call that you now say that Mr.
Wilson had with Colonel Townsend at which he was urged
-- he, Mr. Wilson was urged to make a 75 percent proposal?
Is that your testimony?

A Yes.

Q That it occurred in a telephone call?

A Yes. It may have occurred in a meeting, too.
I know that Mr. Wilson said he was talking with Colonel
Townsend.

Q Can you fix the time of that telephone call?

A Approximately.

Q What is it?

A Well, it was during the period of our intensive
discussions on the subject matter with Dr. Ulrich Wehrli,
and that was sometime during the period of December 14th to
the 20th, or so -- during those days, roughly, before
Christmas.

Q Was Dr. Wehrli over here at that time or did he
come over in January?

A No, he came over at that time specifically on this matter of this offer.

Q Did you understand that Dr. Ulrich Wehrli was over here when the Trustee had this conversation on the telephone with Colonel Townsend?

A He was over here during that period of time, yes, sir.

1009 Q Did he indicate to you, did the Trustee indicate to you, that it was over the telephone that he got this information?

A Well, he told me he got the information. I know he told me he talked to Colonel Townsend on the phone. I know he also told me that Spofford was going down to Washington on the 27th, and we had meetings after that into January during which we discussed the \$40 million for the Government desired by Colonel Townsend.

Q So, the sum total of this is, that you were told of this incident by both Mr. Wilson and Mr. Spofford?

A Oh, yes.

Q Now, you don't know whether it was the product of a telephone call with Mr. Wilson or a personal visit of Mr. Spofford?

A Or a combination, I don't know.

Q You know from Mr. Wilson's testimony of yesterday, it could not have been a face-to-face meeting with Colonel Townsend after the 2nd of December, could it?

A No, but his attorney represented him at subsequent meetings or---

Q But you do remember that Mr. Spofford answered my questions that at no time did they have a 75 percent offer?

A Well, the Government doesn't make offers.

1010

Q Now, on your direct examination, as you reflect on it now, were you telling his Honor that the urging of Colonel Townsend upon the Trustee, to make the 75 percent offer took place at the December 2nd meeting?

A I would say that it took place on several occasions during December.

Q Was one of the occasions the December 2nd meeting?

A Well, on information belief, I would say yes.

Q Was that the first incident that you know of when either Mr. Spofford or Mr. Wilson told you that Colonel Townsend urged the Trustee to make a 75 percent offer?

A The first I knew of this, Mr. Wilson, was when I was asked to come into the Trustee's office to plan to fly with him to Zurich on the subject of a 75-percent-\$40 million offer.

Q When was this?

A This was about three days after the December 2nd meeting.

Q All right. And you learned then that the Alien Property Custodian had at the December 2nd meeting, which

was attended by Mr. Pryor and me, by Mr. Greene and by others, that you were told by the Trustee that at that meeting the Assistant Attorney General Townsend urged the making of a 75 percent offer?

1011

A No, sir. I was told by the Trustee that the Assistant Attorney General, Colonel Townsend, had urged the making of the offer of the 25-75, providing there was \$40 million for the Government, and I did not know which series of talks were involved in it.

Q But, you say you knew this within 3 days of December 2nd, just now, didn't you?

A Yes.

Q All right. And when you were testifying on Direct Examination, do you remember testifying upon this subject?

A Yes, sir.

Q Is it your recollection that you were telling his Honor that this was a subject of discussion at the December 2nd meeting?

A I would gather it would have been, yes, sir.

Q I don't want the subjunctive. I want to know were you---

A It was my impression that it was the subject matter in that meeting.

Q And you were testifying to his Honor that you had been informed that this had occurred at the December 2nd meeting?

1012 A I recall distinctly being informed by Mr. Sam Pryor who was at the meeting, that Colonel Townsend was virtually begging for the offer.

Q And this information, clearly and without qualification, came to you within three days of December 2, 1960?

A Three or four days.. The record would show when I was ready to go to Switzerland with the Trustee.

Q Did you write this to Switzerland?

A I telephoned Mr. Saager in Zurich. Mr. Budich was here on the subject matter, and we relayed it to Mr. Budich, and thereafter I was asked by the Trustee to contact Mr. Saager, and we were going to go to Switzerland to see Dr. Schaefer about this offer, this proposition, so we could get a recovery at that time; and because Dr. Schaefer said he wasn't available, Mr. Wehrli was sent over here.

Q However, did you write Dr. Schaefer on December 15, 1960, as per your Exhibit 95?

A (Examining exhibit) This appears to be a copy of a letter of---- Oh, this is my exhibit already in. Yes. So---

Q Now, I want you to do two things: First, I want you to reaffirm to me that this letter purported to make a report

of things that happened at the December 2nd meeting. Will you verify that, sir?

A I would have to read it.

1013

Q I want you to..

A (Witness read document.)

Q And if you are reading it all the way through, if I may interrupt you---

A I will do whatever you wish me to.

Q If you are going to read it all the way through, then I have got two questions for you to consider.

A O.K.

Q One was the preliminary one: Were you reporting what you heard about the December 2nd meeting?

A No, not necessarily. Dr. Wehrli was to do that.

Q But, I say, don't you report in there on some of the things that happened in the December 2nd meeting?

A Some of the things, but in the first paragraph I say that, "although Dr. Wehrli will have most likely returned to Zurich and reported to you."

Q All right. Now, my second question is more substantial: Do you mention this 75 percent thrust in this letter?

A No, I don't think so.

Q Well, check and see. You'll be bound by your answer.

A Dr. Wehrli was going back with a report.

Q You did write four pages on the subject of

A Mostly on the subject of the reason why the Trustee
1014 did not want that December 2nd meeting, and why the Greene
Group were not interested in the paramount interest, the
cardinal interest of your client..

Q Tell his Honor, one way or other, does the letter
refer in a single phrase to the desire of the Attorney
General, the Assistant Attorney General, to have Mr. Wilson
make a 75 percent offer?

A You'll have to permit me to read it before I
can answer that.

Q I want you to.

A (Witness read document.)

Q What's your question, Mr. Wilson?

A My question is: Is there anything in that four-
page letter reporting on the incident that I have been
asking you about?

A No, sir.

Q Do you, going back to sitting in on Mr. Spofford's
deposition, which was taken right after Mr. Wilson's in
New York, in February of '68, do you remember my asking
these questions, and these answers being given?

"Q Did you get any offer at all?

MR. O'DONOGHUE: What page?

MR. Wilson: Page 14, Mr. O'Donoghue.

1015

"Q Did you get any offer at all?

"A I got no offer from either---

"Q Did you make an offer?

"A No. My, no, I did not. I made no specific offer. If by an offer you mean one, two, three, four, with the terms, financial terms, I made no offer."

Do you remember that testimony, sir?

A It's there. I remember it now.

Q Just to close out this line of inquiry, is it your testimony that you were informed by the Trustee that he had telephone conversations with Colonel Townsend after December 2, 1960?

A Yes, that is my understanding.

Q Now, on the stand yesterday, Mr. Wilson described a conversation of Mr. Townsend earlier than the December 2nd meeting, in which he said he got a definite offer from Colonel Townsend of 75 percent to the Swiss and 25 percent to the United States Government, provided 25 percent equalled \$40 million.

A Yes, sir.

Q Do you now reaffirm that Mr. Wilson told you of that incident?

A Repeatedly; I reaffirm that he told it to me repeatedly.

1016

Q And that this occurred before the December 2nd meeting?

A Before the December 2nd meeting, I recall the Trustee telling me Colonel Townsend kept harping on wanting to be assured \$40 million.

Q And did he describe it as a definite offer of 75 percent, as he did on the stand yesterday?

A On the stand yesterday he said that that's the way Colonel Townsend told him that Colonel Townsend wanted to settle it.

Q But he described it, Mr. Schmitz -- yesterday you were in the courtroom -- as a definite offer of settlement, used that term.

A Well, if the record so showed it. I would have to go by the record of the testimony. As I recall sitting in this room yesterday, and Mr. Wilson saying the way it was was the way Colonel Townsend told him that he, as Trustee, should know that this is the way that Colonel Townsend would like to settle it -- \$40 million.

Q Do you remember my asking Mr. Wilson yesterday if it were a mere suggestion, as he testified in New York, or was it a definite offer of settlement, and what did you hear him say in answer to that question?

1017

A Well, if I recall yesterday, the Trustee was saying, well, in his mind it was specific, in so far as being 25 percent and \$40 million, but the combination of 25 and \$40 million still left open the question as to how much the 25 would be on an audit.

Q Did he say that it was a suggestion from Colonel Townsend, or a definite offer?

A I gathered---

Q Not gathered. What do you recall that you heard him say yesterday?

A I recall that he said yesterday that his understanding was that Colonel Townsend was definite about the \$40 million, and that this is what Colonel Townsend wanted.

Q Did you hear him say that it was not a mere suggestion?

A Yes; I heard him say that as far as he was concerned, it was a clear-cut understanding.

Q When your Complaint was filed in this case, why didn't you rely upon the December 1960 incident, and not the mid-summer of 1961 incident, to talk about an offer of 75 percent?

A Well, for the simple reason that during 1961, there was a point in time -- let me see -- right at the time when Mr. Orrick started in May approximately, when Mr. Orrick

1018 came into the additional duties of taking on the responsibilities of the Alien Property Office; and I remember being called up to the Trustee's office, and the Trustee said that Mr. Spofford had come back from Mr. Orrick's office, and that Spofford was elated with his progress with Mr. Orrick, and he wanted to know how I felt about the idea of a dollar discussion coming up after all the pre-conditions were met as to the format---

Q Mr. Schmitz, you are not answering my question. Wait a minute. No, you're not. Wait a minute.

A And that Spofford said to Mr. Wilson that his feeling was that Mr. Orrick would go along with an amount of ten to twenty million dollars.

Q My question is: Why is it that you didn't put in the December 1960 episode as one which involved a 75 percent settlement with the United States Government?

A Well, it is, was my recollection that when we started off in 1961 with this thing, that the discussions first started on a 75-25 basis with Orrick, where we left off with Townsend in 40 million; and the Trustee was working toward a hundred percent all the time, and trying to get the Government down.

Q That's not what I'm asking you now. I'm asking you if you had knowledge when you filed your law suit, if you believed that an offer was concrete in 1960, why didn't you

1019 put it in your complaint?

A Very simply I believed that it was also concrete to the point of 75-25 in 1961.

Q Do you still believe that?

A Oh! Yeh! Well, the word "concrete" -- I believe it, that in 1961, that the Trustee was able to get the same level that he got in '60 with Townsend.

Q And you are telling his Honor that you are sticking by the allegation in Paragraph 14 of your Complaint that in 1961, there was an offer to settle for 75 percent for the Swiss? Is that your testimony here?

A No, because I've testified the Government doesn't make offers. The Government asks to have offers made to it.

Q Didn't you allege in your complaint that this was a firm offer of 75 percent?

A It was my understanding, and I swore to the complaint on information and belief. And as I say, I was under the information and belief that during '61, in the initial phases with Orrick, that the Government was willing to entertain the 75-25-40; and I believed that then, and I even know I-- I believe the Trustee was able to get it for ten to twenty million dollars.

Q Mr. Schmitz, the complaint that is now on trial here is the second or third complaint that you have tendered to

1020 this Court, isn't it?

A Yes; they were all equitable lien complaints.

Q You tendered one in intervention before we closed out the proceedings before Judge Pine, didn't you? Right?

A During the operation of the Settlement Stipulation (for) before Pine, I tried to intervene.

Q Then, you filed another Complaint in which you sought to proceed wholly on the equitable lien theory---

A They were all equitable lien theory.

Q Wait a minute -- and service of process on Interhandel by registered mail, didn't you?

A Yes.

Q And after the Kellerine decision, which said I was an agent of Interhandel, you filed a third suit.

A Well, they are all basically the same suit.

Q And the third suit, you served me with the papers, didn't you?

A Yes, sir.

Q When did you first assert the claim for \$11 million as a finder's fee; based upon 75 percent, or \$225 million of the settlement? When did you put that in your Complaint the first time?

A I put it in my Complaint in '67, but it still would have been adduced in testimony in the previous---

1021

Q My question is, it wasn't in your earlier Complaints, was it?

A It didn't have to be.

Q Just answer me yes or no. Don't argue the point.

A It wasn't in my earlier Complaint, no.

Q And in the earlier two Complaints, you claimed 5 percent of \$145 million, didn't you?

A Yes, sir.

Q And then you prepared this Complaint, or you with your counsel prepared this Complaint, in which you relied upon a firm offer in 1961 to base your claim of 5 percent upon 75 percent settlement, didn't you? Answer that yes or no.

A Yes, surely.

Q And when Mr. O'Donoghue prepared that Complaint, you knew of the conversations that had taken place between you and Mr. Wilson with respect to the December 1960 incident, didn't you?

A Oh, sure.

Q But you didn't put it in your Complaint, did you?

A Which Complaint?

Q Any Complaint.

A Sure I did.

Q Where did you put it?

1022

A Put what? A conclusion of fact as to a specific conversation? I wouldn't want to make evidentiary things in my Complaint.

Q Did you say anything about any offers being made in 1960?

A Offers weren't made. It was a matter of Colonel Townsend asking the Trustee to make an offer. This was a matter of format or procedure with a sovereign.

Q Are you now today saying to his Honor that, whether or not you can do this legally, you are telling his Honor that you are relying upon an offer in 1960 to raise your claim from \$7 million to \$11 million?

A I'm relying in this Court on the evidence that comes before the Court.

Q What reliance do you put upon the 1960 evidence to support your increase of your claim from \$7 million to \$11 million?

A The reliance I put on it is whatever is brought out as evidence in this Court.

Q What evidence has been brought out in this Court?

A That's a matter of the record, of the transcript of the trial.

Q Is that the only answer you want to make?

A I'll make more if you want to ask me some more questions.

1023

Q No. I want to give you an opportunity, a free opportunity, in your own language to explain to his Honor why you put 1961 as the time of the offer in your present Complaint---

A Very simple.

Q Wait a minute. --when you were aware of the fact that the offer was made in 1960?

A Because, in 1961, the Trustee was proceeding under the new Kennedy Administration, with new staff in the Government, and it was my understanding that ^{at} an early point in 1961, the Trustee informed me that he would have no trouble getting the 75 percent thing, and that Spofford had been down in Washington, talking to Orrick about dollar figures and arrangements; and I understood from the Trustee when he called me up one day and said, "Bob, would you go along with the 75-25 now with the Government because we can get it?" And I went on that to assume that the Trustee could get it at that point.

So, therefore, on information and belief from Interhandel's own Trustee, it was my understanding that he could get that, so I naturally had a right to put it in the Complaint, even though I knew that in 1960 we could have already had it.

Q You say in 1960?

1024

A In 1960, I knew we could have had it.

Q Is there any more explanation you want to make?

A I don't think I need to give any more.

Q Were you aware, as you sat on the stand in Direct Examination, that your Counsel did not ask you one word about any offer of 75 percent in 1961?

A I would have to look this--- This is a pretty big record by now.

Q No. I'm asking, do you remember you weren't asked about it?

A Well, I haven't been on redirect yet, have I?

Q What is your recollection as you sit here, as to whether you were asked about it?

A I don't recall being asked about it.

Q Mr. Schmitz, was it planned between you and your Counsel that you would not be interrogated about the allegation about a 1961 offer when you took the stand?

A My counsel and I make no plans of that sort at all, no, sir.

Q I am going to leave this incident, with the challenge to you and your counsel to find in the record -- and you can have my transcript to do so -- any allusion in the Direct Examination to an offer in 1961.

MR. O'DONOGHUE: I object to that, your Honor, as

1025 being argumentative.

THE COURT: Yes. I will sustain the objection.

MR. WILSON: It's still on the record, isn't it?

THE COURT: Very well.

MR. WILSON: Sir?

THE COURT: You may proceed.

BY MR. WILSON:

Q There is no doubt that in 1953 to 1956 -- and these are approximate years -- Mr. Charles Wilson had a keen interest, by reason of his loyalty to his employer, namely Grace & Company, for the Grace Company to acquire the General Aniline stock from Interhandel, didn't he?

A I wouldn't say that.

Q How would you describe Mr. Wilson's interest in the transaction?

A Mr. Wilson's interest in the transaction was that his primary duty to his employer, the Grace Company, was to advise the Grace Company how to diversify and acquire into the chemical industry, per se. His interest was keen to negotiate an acquisition of the General Aniline & Film Company, but it had to be done on a very careful, step-wise, meticulous basis. And so, I wouldn't phrase it quite the way you put it.

Q Well, any way, he was active and interested in

1026 Grace Company acquiring General Aniline from the Swiss, wasn't he?

A Yes, sir.

Q Were you at any time with Mr. Wilson at Shields & Company, talking to Paul or Corney Shields or talking to MacRae Sykes?

A I did not know Mr. Wilson until August 15 of '53, hadn't met him before August 15, 1953.

Q Now, after he left Grace, is it not your testimony that with respect to every one of the individuals that you talked to about acquiring General Aniline, that on one or more occasions, Mr. Wilson was present at those meetings?

A Yes, I would say so.

Q And this includes Frank Pace, of General Dynamics?

A Yes.

Q Paul Davies of Food Machinery?

A Yes, sir.

Q And Joe Martino, of National Lead?

A Yes, sir.

Q Why was he present on one or more of the occasions in these incidents?

A Well, I will tell you the reasons I would say -- he may have his own. I will first point out this one thing,

1027 that of course, he met the Interhandel Board in Switzerland in '53, and had the dealings through '56; and he had become rather really friendly towards the cause of your client. Secondly, when President Eisenhower asked him to take on the presidency of the People-to-People Foundation, Mr. Wilson who had been my boss for three years, had become my friend and he was profoundly concerned with this confiscation of private property.

He had, as I testified earlier in this trial, had repeatedly been asked to the White House to consult on the matter of enhancing and uplifting America's position in the world; and I recall that I went to his offices at People-to-People during the Summer of 1956, and I had drawn up a letter to him, and I asked him a question: I asked him, I said, "Mr. Wilson, could it be consistent with the principles of People-to-People, that we should abide or tolerate this confiscation of Interhandel property?" in substance.

So, therefore, the reason Mr. Wilson took the trouble to give his valuable time to talk to Mr. Pace, to Mr. Martino, and to Mr. Davies was that he stood by there to say to these gentlemen that he, from his personal talks at the White House, was convinced that the Sovereign United States

1028 Government would want to return this property. And the problems that were discussed with these gentlemen were, of course, all modified by their subjective corporate needs. They had their own desires and their own ideas, but the whole matter was one of seeing whether or not we could fit their posture to the benefit of the Swiss. It was basically that.

Q Now, in all these approaches that you made or that were made to you by Frank Pace, Paul Davies, Joe Martino, you were seeking an agency arrangement with these American enterprises to help them acquire General Aniline from the Swiss, weren't you?

A No, sir. I was seeking to help the Sturzenegger control and your client to recover their property with every piece of reinforced power that could be; and if this involved a matter of their getting it through my agency, yes; but it was primarily that I was seeking to enlist every bit of support for Interhandel.

Q Was that the same situation with Shields & Company?

A With Shields & Company, I think the first letters that are put in as exhibits here speak pretty basically what the objectives were. They speak for themselves.

Q Were they different objectives?

A Not as far as I was concerned.

1029

Q In other words, is it correct to say, from what you have just said that Sturzenegger's interest was more paramount than the people who were paying you to be their agent?

A No, not whatsoever. I can honorably protect the interests of your client, and still guide people to a successful joining of forces.

Q Isn't there divided loyalty in that?

A No, sir.

Q But you were seeking employment by Joe Martino, of National Lead, isn't that so?

A I don't work for nothing. Yes, sir.

Q All right. Mr. Wilson was not seeking any monetary gain, was he?

A No, sir.

Q Was he the one who introduced to these people?

A No.

Q Well, then was he the one---

A That's too absolute an answer. He introduced me to Mr. Davies, but I was introduced to Martino by John Nugent, and I was introduced to Frank Pace in my church.
with me
He was an usher/in my church and I knew him.

Q Well, Mr. Wilson went along to support your thesis?

A No, sir.

1030-1040

Q Did he support---

A What do you mean by my "thesis"? That's a broad subject.

Q The thesis that the Swiss were entitled to get this back and that this should be Americanized, and all of that approach that you and I know, we are so familiar with?

A Yes. He supported the idea that our clients were entitled by right to get this back, but it went beyond that.

Q Did he make assertions in '57 and '58 to Paul Davies and to Joe Martino and to Frank Pace that the Swiss were "clean" in this transaction, that he was sure of it, and that they ought to get their property back?

A He made assertions definitely that he believed that the confiscation of this property was wrong.

Q And did he do it---

A He believed that Sturzenegger was "clean," yes.

1041

Q He did that on the basis that there was no enemy control and no enemy taint, didn't he?

A Well, he did it on the basis that he was, over the years, I think I can say that he did it on the basis that there was no enemy control, no enemy ownership. The question of taint, which was still nebulous as you showed in the record that you just introduced here. The taint was used by the Court of Appeals as quote unquote.

Q Supreme Court.

A As quote "taint" unquote, and the doctrine of taint had not been established.

Q But you had a good advocate in Mr. Wilson in supporting your thesis that this was an unjust confiscation and that the property ought to be returned to the Swiss?

A No, he didn't try to support my thesis. I supported that myself as a representative of Sturzenegger. But Mr. Wilson basically attended these meetings in order to tell Mr. Davies and Mr. Pace of his personal understanding of the policy posture at the White House.

Q Mr. Schmitz, only two questions and answers back -- and if you want it read back I will ask Mrs. Taylor to read it back.

A Please.

Q You said he was reaffirming the cleanness of
1042 Sturzenegger?

A Why sure. Certainly he believed Sturzenegger was clean.

Q And actually, you know that Dr. Sturzenegger was the main target of the attack of the United States Government in the Interhandel case, don't you?

A Sure. And I know a lot of other things about the matter.

Q I know.

A This is not for arguing.

Q Wait a minute. Don't argue with me.

A I am not going to, no.

Q You knew that when you asserted the cleanness -- and this is a shorthand phrase that you and I know what we are saying --

A Sure.

Q And this is about one matter that you and I agree on?

A You're darn right.

Q I think he was clean, too.

A Your darn right.

Q The point is that Mr. Wilson was readily telling these gentlemen of his belief in Sturzenegger's cleanness, wasn't he?

A I would say so, and there are two --

1043 Q Why did Mr. Wilson need -- you want to answer something else?

A Please question me. I'll answer.

Q Why do you make such a point of Mr. Wilson having to be satisfied from Dr. Schaefer in 1960 about the cleanliness, let's call it the cleanness of the Swiss?

A Now, the matter of the justness of the Swiss's cause and the unjustness of confiscation was in the mind of the men. I am not going to pivot on labels but I want to say this: That with respect to the matters of Sturzenegger and

the Sturzenegger character, I pointed out repeatedly over the years to Mr. Wilson and certainly to Mr. Davis and everybody I talked to about it, that the position, of course, of the Swiss government was focused on their ratifying the Washington Accord and the Sturzenegger cleanness had been found validly so, under the terms of that Accord, so, from the point of view of the sovereign Swiss government there posture towards The Hague and towards enforcing treaty obligations that they saw they should do, were with respect to that treaty. However, with respect to the allegations of the defense in the Department of Justice who were really giving you a very hard day's work all the time. With respect to the contention that they would have a defense on taint, I always specified that to my understanding that taint was not a doctrine that would ever be defensible in
1044 the United States.

Q I understand that but you are now getting away from the text. My point is that when Mr. Wilson introduced you to these industrialists whom you knew him and took him along with you in 1957 and '58, he was verbally supporting your position in talking to these people that the Swiss were clean, wasn't he?

A I don't think he used the word clean. I wouldn't.

Q This is a shorthand phrase.

A I would say affirmatively that he said to these men that he believed that what I stated to them about the integrity

of Sturzenegger and the Swiss positions was valid, say. It's a question, however if I were going to take on the duty of a trustee and I were a rich man I'd know dogonne well/^{I would want}the man giving me the powers to tell it to me to my satisfaction then. That's another matter.

Q The bankers came into this case for the first time in the year '58, didn't they?

A Well, wait a minute. Sturzenegger was late '57 -- Sturzenegger worked this thing around -- the Board meeting that put Pfenninger, de Loës, Schaefer and Reinhardt on the top positions was at that famous reorganization stockholders meeting.

1045 Q This was what, June of '58?

A Yes, about that.

Q Now, to your knowledge -- first, let's develop who Dr. DeLoes was.

A He was the president of Swiss Bankers Association in Geneva.

Q To your knowledge had any of these four individuals had any historical relationship with I.G. Chemie or Interhandel prior to their going on the Board?

A They had not.

THE COURT: What did you say?

THE WITNESS: They had not, sir.

BY MR. WILSON:

Q Then the assurances these gentlemen would give to Mr. Wilson, while very welcome assurances and perfectly proper, had to be based on what they were told, weren't they?

A Well, it was a little stronger than that. At Paris Dr. Schaefer stated to Mr. Charles E. Wilson that he came on the Board and that this entire change was one which was backed by the Swiss government and that he came on the Board with the clear backing of the Swiss government that there was not one iota of taint.

Q You had read the Swiss Compensation Office's reports, hadn't you?

1046 A Over the years I was given about 45 pounds of paper by your client and I read most every one of them over the years including that.

Q Well, it did not take 45 pounds of paper to write briefly the Swiss Compensation Office Report which is in this first volume of about 40 pages?

A I read it around 1951 or '52.

Q You had told Mr. Wilson what was the product of your talks with your old friend Sturzenegger?

A When?

Q Over the history of this case?

A Yes, I am sure.

Q Your uncle Albert Gadow?

A Right.

Q Your father D.A. Schmitz?

A Yes, sir.

Q And you had thereby reinforced his belief in the worthiness of the Swiss cause, hadn't you?

A I would say so.

Q Whereupon with that reinforcement he then was supporting the Swiss cause from the point of view of being meritorious?

A When was this?

Q '57-58?

1047 A He was also supporting the position of his government in that he said to me repeatedly over the years -- I recall he had come back from Washington and he would repeatedly fathom the attitude of the government with respect to finding a way to unvest or divest themselves of this so that therefore -- there was not too great a dissimilarity between the ultimate analysis between the positions of the United States Government or Swiss.

Q You slipped in the word "also" on me there in that answer. My question is, let it be true that he talked to the people in Washington and told to his friends what he talked to the people in Washington about. My point is he also told your friends of the sanctity of the propriety of the meritoriousness of the Swiss cause, didn't he?

A The justness yes, I believe he believed in the justness.

BY MR. WILSON:

1048 Q Mr. Schmitz, on your direct examination, and I have reference to page 146 of the transcript, your testifying to the era when Dr. Frey was active and I said this -- that Dr. Frey also asked me to ask Mr. Wilson to do whatever he could do to opposition to the indicated attempts by Senator Keating and Congressman O'Brien, I think it was, to get a bill passed to compel the sale of their property -- do you remember testifying to that?

A Yes, sir.

Q My question to you is, are you aware of Mr. Wilson doing anything at that time as suggested or requested by Dr. Frey?

A I can't recall what he did. I just remember Dr. Frey asking me.

Q He asked you to keep yourself available to follow the proceedings before the Senate Judiciary Committee, the so-called Johnston committee; isn't that true?

A Yes, sir.

Q Did Mr. Wilson report to you that he had talked to any members of the Congress in 1959 about the sale bill?

A I can't recall that he did.

Q Do you remember whether you rejected the suggestion or request of Dr. Frey that Mr. Wilson be active in the legislative area?

A Well, I didn't reject it. I said I would transmit his request and tell him.

1049 Q And did you?

A Yes, sir.

Q Did you meet with resistance from Mr. Wilson at that time?

A I don't think so.

Q In other words, he was quite cooperative?

A He was always wonderful.

Q You side-stepped my adjective.

A He was good.

Q No, no. He was cooperative with most of the things you asked him to do?

A Not always. He weighed everything.

Q Can you think of a single thing you ever asked him to do that he didn't do?

A Yes, I can think of some things where I asked him his advice and would have liked to have had him to do some things and he said it would be better if he didn't.

Q Was this one of them?

A I can't recall that this was.

Q Thank you.

Do you remember, Mr. Schmitz -- going to another subject now -- do you remember that you were in Zurich in October of 1960?

A Yes, sir.

1050 Q Can you fix the approximate days you were there?

A I think so. I think I was there about October 13th for about a week thereafter.

Q Prior to that time, namely, on August 1, 1960, had you written Mr. Charles Wilson, as per Plaintiff's Exhibit 64, in which you described services that you could or were rendering and raised the question of compensation?

A Yes, I wrote this letter.

Q And --

THE DEPUTY CLERK: Defendant's Exhibit 19 marked for identification.

BY MR. WILSON:

Q Were you aware as to whether Mr. Wilson transmitted that letter to Dr. Schaefer?

A I could not say right now that I know he did or didn't.

Q I wonder if you will look at Defendant's Exhibit for identification 19, a letter dated August 4, 1960, and see whether you ever saw that letter before -- or a copy of it --

1051 around the time I mean that it was sent?

A Well, yes, one refers to this letter. This is a letter of transmittal of this letter (indicating).

Q MR. WILSON: This and this is not very helpful.

THE WITNESS: Plaintiff's Exhibit 64 is a letter which is enclosed with Defendant's Exhibit 19.

* * *

BY MR. WILSON:

Q Up to this time, you had been reimbursed for your expenses of some \$13,000, had you not?

A Up to that time, I was reimbursed at the express offer of Dr. Schaefer to be so reimbursed for expenses.

Q Mr. Schmitz, don't -- no, no, no. I want you to stop now because you interpolate these parenthetical expressions which are not directly in answer and are self-serving --

A Some expenses.

Q -- and which are self-serving but you did get a remittance for expenses?

A I received a remittance for expenses.

Q Do you remember whether that went out in two pieces? It was thirteen thousand some dollars that you submitted a bill for, wasn't it?

A Yes, sir.

1052 Q And do you remember it went out in two pieces, \$10,000 you asked to be sent to credit your wife's account?

A I can't recall what the routing was.

Q Do you remember that somewhere along the line you telegraphed to send the rest of it?

A Oh, I think I telegraphed about sending a balance to my account at Chase Manhattan.

Q The balance you were talking about --

MR. WILSON: Get that telegram, will you, Frank?
July 1 I think it is --

BY MR. WILSON:

Q That was the balance of the expense money, wasn't it?

A Yes.

MR. STRICKLER: July 11th is the right date.

MR. WILSON: Mr. Bassett, will you give this a number and see what we can do with it, please? It's a terrible copy.

THE DEPUTY CLERK: Defendant's 20 marked for identification.

BY MR. WILSON:

Q Mr. Schmitz, this purports to be a Western Union cable to Dr. Wehrli of Union Bank, July 11, 1960, sent by you, it's Defendant's Exhibit for identification number 20. If you
1053 can read that you're a better man than I am.

A (Witness reading) It's a telegram, cable, copy that I sent to Dr. Wehrli.

Q And picked up the balance of these expenses, didn't it?

A If I can get out of this photostat --"please wire balance to me, same routing original account draft, mailing letter Wednesday, regards, Robert."

Q Well, all I want to establish is that the balance you refer to there, is not related to compensation but to expenses, isn't that right, sir?

A Just to the \$13,000 expenses, yes.

Q In your letter to Mr. Wilson of August 1, just that the Court may keep up with you and me and what we are seeing here in Plaintiff's Exhibit 64, after describing the nature of your services, you do suggest a figure for compensation, for a period, don't you?

A Well, this second paragraph says: "I submit that the consideration for such services for July 1st '60 to December 31, '60 be \$25,000 plus expenses." From July 1 to December 31. That paragraph is only part of the letter, though.

Q Don't let me keep you from mentioning anything else you want to.

A The letter speaks for itself, it's in evidence.

1054

MR. WILSON: Your Honor, I haven't been too precise about making offers, while I think about it may I offer 19 and 20 because I have it in my hands?

THE COURT: Any objection, Mr. O'Donoghue?

THE COURT: The two exhibits are received in evidence.

BY MR. WILSON:

Q I show you Plaintiff's Exhibit Number 70, and ask you if this is a letter dated August 30th, and ask you if this 1055 is a communication which you received from Dr. Schaefer, on or about its date, allowing for travel time?

A Well, this is a letter I received from Dr. Schaefer, yes.

Q Did Dr. Schaefer make you a counter proposal in there, and would you read that section to His Honor or read as much of it as you think fairly presents your position?

A This letter presents his position.

Q If there is anything in there you want to read -- I asked you to read.

A I will read the whole letter if you wish.

Q Read the part about the \$3,000, will you?

A Where shall I start, Mr. Wilson? To make sense. You tell me and I will read.

Q Let's read the whole letter. It is not long, Your Honor, may we?

THE COURT: Yes.

THE WITNESS: "Dear Mr. Schmitz: Mr. Charles E. Wilson has sent me your letter of August 1st and I had in the meantime the opportunity of discussing this matter with my

colleagues of the Executive Committee of the Board. Already at the occasion of our meetings in Zurich and Paris I told you how much we appreciate your assistance and that we entirely agree to hold at your disposal certain sums as a compensation for the time you spent in this connection. As to the program outlined in your letter, I however believe that for the time being, we have to split up into two parts. At present the main item will definitely be to help Messrs. Charles Wilson and Spofford in their endeavors and to keep all necessary information at their disposal. Quite a difficult task may arise if and when the first decisive step in the direction we all have in mind will be accomplished. I am fully aware that at such a time, perhaps a much farther-reaching cooperation will be required. I therefore should like to propose to you an agreement with my colleagues of the Executive Committee for the present period a monthly retainer of \$2,000 and to re-examine the situation when our plans further proceed. With kindest regards. Yours sincerely. Schaefer."

THE COURT: What is the date of that letter?

THE WITNESS: The date of this letter is August 30, 1960.

BY MR. WILSON:

Q Mr. Schmitz, I show you Plaintiff's Exhibit 75, dated September 19, 1960, and ask you whether you identify that as a letter which you wrote Dr. Schaefer in response to number 70?

A Yes, sir, Plaintiff's Exhibit 75 dated September 19, 1960 which is a letter that I wrote to Dr. Schaefer.

1057

BY MR. WILSON:

Q You identified Dr. Schaefer's letter to you of August 30?

A Yes.

Q Let me show you next in chronological order number 71, which apparently crossed in the mails. Is that a copy of your letter to him of August 31? I want you to look, I think it's the last paragraph, if you don't mind?

Just to be sure you don't read -- yes -- would you read the last paragraph?

A Yes, I will. The last paragraph states: "The trustee and I were both wondering yesterday why there had been no response or action taken in reply to his letter to you earlier this month enclosing a copy of a letter of mine to the trustee. Could it be that you have been expecting and awaiting a parallel
1058 formal letter from me in this regard? If this is so, your advice will be appreciated. Yours truly. Robert A. Schmitz."

Q If you want to take a quick glance, this is in evidence so you needn't worry about that. I think that's the only reference to money, isn't it?

A In this letter?

Q Yes.

A I guess so, yes, sir.

Q Let me show you together 74 and 75, both bearing the same date, namely, September 19, 1960, and both addressed to Dr. Schaefer. Do you identify those two letters as being letters dispatched on or about the dates stated?

THE COURT: Whose letters are they?

THE WITNESS: These are letters of mine to Dr. Schaefer.

THE COURT: Both of them?

THE WITNESS: Yes. I identified these as letters of mine dispatched to Dr. Schaefer dated December 19, 1960, one marked Plaintiff's Exhibit 74 and the other Plaintiff's Exhibit 75.

BY MR. WILSON:

Q I am anxious that you shall read aloud 74 which is the one that Mr. O'Donoghue called my attention to. So let's lay that aside a moment and ask you, is there some reference in 75 to the subject of how much you should be paid? I found
1059 a paragraph I think on the second page.

A (Witness reading) All right, here is something that says something about money.

Q First let me establish this: Were both of these letters in reply to the August 30 letter, namely, 70?

A This one refers to it so it must be. So does this one.

Q When you say this one -- 74 and 75?

A Yes. Both of them mention the August 30 letter.

Q You just discovered something on the first page of 75?

A 75. Yes, sir. You asked about money.

Q Would you like to read it aloud?

A "Our chief concern is our destination, our chief interest right now is not money beyond the point of accommodations as to help provide means of the best interests and the necessary objectives."

That says something about money.

Q As I say, it's in evidence, and His Honor will see it anyway, the whole letter.

A Yes.

Q But particularly -- would you look at the bottom paragraph of page three and the top paragraph of page four?

A The bottom paragraph of page three reads as follows:

1060

"The interim amount proposed in your letter of August 30 is less than what I commanded in normal competitive business already some years ago and is certainly less than I can command today, along my executive and professional line of work without overhead. The proposal of compensation for services transmitted to you was stated advisedly in propor-

tion to normal realities here in America and in this light was not overly demanding of the Swiss principals."

Q Your counsel can point out any other paragraphs in here and rather than we take more time of the Court here in the work taking five pages, but I think that's the principal.

Let's turn to 74 which is not a long letter and I think it would be well if His Honor heard that letter in its entirety. This is also from you to Dr. Schaefer under date of September 19, 1960, in reply to number 70, isn't it?

A Yes, sir.

Q Would you read that to His Honor?

A Yes.

"Dear Dr. Schaefer:

"Respecting your letter to me of August 30, kindly have an account set up with your bank in my name, from which I can draw until the end of 1960, either in the amounts as suggested by me or in any amounts you wish to provide for the time being after considering the situation, and advice.

"The unique complexities, vast scope and particular sensitivities of the undertaking in which we have been collaborating, together with the high degree of competence and friendly endeavor it requires, all make it difficult at this time to evaluate compensation for any services.

"Such payments are made available as initial payments on account of interim services to Messrs. Spofford and Wilson on your behalf. The foregoing, however, will in no way compensate for any services otherwise rendered by me or for any capital interest to be created on my behalf or credited through services over a period of years.

"Very truly yours.

"Robert A. Schmitz."

Q Now, you went to Zurich, I think you said -- what did you say -- about the 13th of October?

A I was in Zurich I believe about the 13th of October for approximately a week thereafter, in 1960.

Q Was the subject of compensation discussed while you
1062 were there?

A Oh, yes, I recall that I told Dr. Schaefer in Zurich at the time that as far as I was concerned the matter was to get this recovery and I was not concerned whether or not they paid me anything on account to help me in the interim or not that I would go ahead and do what I had to do to get this recovery. I was not concerned if it took till later.

Q Did he bring up the subject of compensation with you?

A I don't think so. My first contact with the bank was with Mr. Saager. I had more meetings with Mr. Saager than Dr.

Schaefer that trip. In fact I don't think Dr. Schaefer was there the day I got there -- until a couple of days later.

Q I don't think this is particularly in conflict with what you have just said, but let me read you the way you said it on direct examination and ask you if you are in effect saying the same thing. This is from page 295:

Mr. O'Donoghue had asked you the question:

"Question. Was there any discussion by you with Dr. Schaefer or anyone else concerning the compensation?

"Answer. Yes ---

"Question. The matter of compensation?

1063

And then you made this answer which is about ten lines for me to read:

"Yes, at that time I told Dr. Schaefer that I was more interested in helping the trustee and so on in the job he had to do, and to help Interhandel get the recovery and I was not primarily concerned at the moment in whether or not I would be with my family. My eight children -- I remember showing him photographs of my sons and I said, 'Well, that I was not primarily concerned with this no matter how hard it was, and that for the moment, as long as we got the job done, that I would basically forego any

matters which related to any compensation for any Interhandel services I was rendering in order to do my job."

MR. WILSON: Now Mr. O'Donoghue, to assure you I am not cutting off in the middle of the text, the next question goes to another subject, "Did you go anywhere else in Switzerland besides Zurich when you were there? Answer. Yes."

1064

BY MR. WILSON:

Q You did have a conversation with Dr. Schaefer in Switzerland on this?

A Yes, sir.

Q Despite that discussion, I want to ask you whether, almost as soon as you got back to the States you received Exhibit Number 78 from the Union Bank of Switzerland?

A Yes, that is Plaintiff's Exhibit Number 78, from Union Bank to me.

Q And it remitted \$10,000 to you, did it not, sir?

A Yes.

Q And it was for the period of five months beginning with June 1, 1960, sir?

A Yes, sir.

Q And that carried you June, July, August, September
1065 and October?

A On account.

Q Right, sir. You accepted the check, did you not?

A It was a draft.

Q You accepted the draft?

A Certainly.

* * *

BY MR. WILSON:

Q Were you still, after you got the October remittance, were you still indifferent as to whether you were paid monthly compensation or not?

A No, sir, I was not indifferent as to being paid a compensation.

Q I want to show you -- I hope to.

THE COURT: He did not say "compensation." He said "monthly compensation."

THE WITNESS: The answer is no, sir.

1066 MR. WILSON: I am hoping we can find the letter of November 16.

MR. O'DONOGHUE: Do you have a copy of it?

MR. WILSON: I know what it says but I don't seem to have a copy of it.

BY MR. WILSON:

Q I show you your Exhibit 88, which is dated December 1, 1960, addressed to Dr. Schaefer, and I wish you would look at the first full paragraph on the third page -- it's written by

you -- beginning with the word again. Would you read the rest of the letter beginning with the word "again?"

A "Again, apart from the foregoing, a situation developed which annoys me personally, and which I consider wrong and demeaning to me. I mention it to you privately because I do not expect, nor do I intend to be tolerant of a repetition.

1067 "On November 16th I wrote your Foreign Department instructions demanding a transfer of U.S. dollars \$2500 to my account at Chase Manhattan. Not \$2300, \$2,520.50, or some other figure, but \$2500 to the penny. Instead your subordinates took the liberty of sending \$2,403.66 saying that unless I kept a hundred in your bank, I could not maintain an account there. My draft order was legally commercial paper, to be honored exactly or dishonored not to have others' judgment pass on it quantitatively. Well I asked for \$2500, so that they could have closed it out, for all I care. Foresight would indicate that some day in the future I may become a most valuable and substantial client and/or associate of Union Bank.

"If my order could not be complied with exactly, it should have been rejected in toto for reconsideration or, with sense, the question should

be asked, where is the interim \$2,000 per month due to be deposited as an advance retainer. With November and December a balance in my favor of \$4,000 should have been deposited automatically in addition to the previous balance."

Q What's the date of that letter?

A This letter was December 1, 1960.

THE COURT: And that was from you to whom?

THE WITNESS: To Dr. Schaefer.

BY MR. WILSON:

Q Would you read the last paragraph, too?

A Last paragraph?

Q Yes.

1068 A Certainly.

"I feel a deal is a deal and my embarrassment does not indicate that all of Union Bank's employees are aware that I am a man entitled to have special treatment indeed. Thank you for anything you can do to rectify this."

MR. WILSON: Thank you, sir.

1069 MR. WILSON: I said I think the letter which you
can't find --

THE COURT: You mean the paper which you can't find?

MR. WILSON: -- paper which we can't find is your request for \$2500.

THE WITNESS: Out of my account. I had an account with the bank.

MR. WILSON: Give this a number.

THE DEPUTY CLERK: Defendant's Exhibit 21 marked for identification.

(Defendant's Exhibit No. 21 was marked for identification.)

BY MR. WILSON:

Q Mr. Schmitz, 21 for identification is a handwritten letter on which somebody has done a typewritten copy. Would you identify that to His Honor by date and who is the addressee and addressor?

A Addressee is Dr. Ulrich Wehrli, Union Bank of Switzerland. I am the addressor.

Q The date of it, sir?

A The date of the letter is January 4, 1961.

THE COURT: What is the date?

THE WITNESS: January 4, 1961.

BY MR. WILSON:

1070

Q Will you read it if it's short, Mr. Schmitz?

A "Dear Dr. Wehrli:"

THE WITNESS: I will proceed.

"Dear Dr. Wehrli:

"Kindly arrange to have U.S. dollars, two thousand two hundred fifty (\$2,250.00) transferred from my account in Zurich to my account at the Chase Manhattan Bank. Grand Central Branch.

"I would appreciate it if these funds could be available to me in New York by the middle or end of next week by the best suitable means.

"A statement of my expenses, including out of pocket will be forwarded shortly together with instructions.

"Thanking you in advance I remain very truly yours. Robert A. Schmitz."

BY MR. WILSON:

Q Look at the notation on the handwritten copy and see if that refreshes your recollection that the money was sent, sir?

1071 A That says that \$2,000 was sent.

Q There is a date given isn't there, 10th of January, 1961?

A "Credit of \$2,000, value, 1-10-61 comma, posted today to this account." It looks like there was a little piece of paper stapled onto my letter.

Q I am not attributing that to you; I am only asking did you get that remittance pretty promptly?

A I would have no reason to doubt it.

Q Thank you.

THE DEPUTY CLERK: Defendant's Exhibit 22 marked for identification.

BY MR. WILSON:

Q Mr. Schmitz, I show you Defendant's Exhibit for identification, 22, and ask you if you can identify that by date, and sender and receiver, please?

A This is a letter of mine which -- a photostat of a letter of mine dated January 26, 1961, addressed to Dr. U. Wehrli, Union Bank of Switzerland, and the photostat shows a registration number 518 dated January 26, '61 and attached here is a statement for out of pocket disbursements and direct
1072 expenses paid at this time by Robert A. Schmitz from May 4, '60 until December 31, '60 of \$1,296.28.

Q Read the letter. It's short.

A "Dear Dr. Wehrli:

"Enclosed herewith you will find invoice statement of my direct expenses paid during the period indicated.

"Kindly transfer this amount for deposit in my account at Chase Manhattan Bank, Grand Central Branch, as soon as may be convenient.

"Also as soon as may be convenient after February 1, 1961, please transfer \$2,000 to my above-mentioned account as my interim retainer for February, consistent with the provision of the previous month's.

"With kindest personal regards, Robert A. Schmitz."

Q As far as you can recall you received that remittance?

A Yes, sir.

THE DEPUTY CLERK: Defendant's Exhibit 23 marked for identification.

1073

BY MR. WILSON:

Q I show you 23 for identification, Mr. Schmitz, and ask you if that's a letter from you to Dr. Wehrli on or about its date and what is its date?

A This is a letter of mine to Dr. U. Wehrli dated March 21, 1961.

Q Did you want me to read it?

Q Is there an enclosure? Read the letter and you can tell thereon whether there is an enclosure.

A "Dear Dr. Wehrli:

"Enclosed herewith you will find invoice statement of my direct expenses paid during the period indicated.

"Kindly transfer this amount for deposit in my account at the Chase Manhattan Bank, Grand Central Branch, as soon as may be convenient by cable.

"Also as soon as may be convenient after April 1, 1961, please transfer \$2,000 to my above-mentioned account, as my interim retainer for April consistent with the provisions of the previous months.

"With kindest personal regards.

"Thank you. Robert A. Schmitz."

1074

Q Did you receive that remittance?

A I would say I did.

Q The tete-a-tete I had with Mr. O'Donoghue was there is a little handwriting done at the bank and I am not interested in having it go in evidence at all. I don't care.

MR. O'DONOGHUE: I don't have any objection to that. It's signed A. Schaefer.

THE WITNESS: That's his signature on it. All right.

BY MR. WILSON:

Q Dr. Wehrli just told us that means -- I have seen it -- is that right?

A That's his signature.

THE COURT: Are you offering it in evidence, Mr. Wilson?

MR. WILSON: I have got a lot of them.

THE COURT: If you have got a lot of them?----

MR. WILSON: Let me make an offer of a lot of them.

I find we have not made an offer of Number 6.

THE COURT: You can count on the transcript as being Gospel.

MR. WILSON: I have just finished dealing with Number 23 and for the sake of completeness and lack of too
1075 much meticulousness, I offer in evidence all of our exhibits including, up to and including 23.

THE COURT: Do you have any objection, Mr. O'Donoghue?

MR. O'DONOGHUE: I think not. Let me get it clear. I know this 21, 22 and 23 you are offering now that had not been offered before, and I have no objection to them. What else is included in that?

MR. WILSON: What else?

THE DEPUTY CLERK: Number 16 is report of the telephone call to Dr. Wehrli with Mr. Charles E. Wilson.

MR. O'DONOGHUE: I object to that.

MR. WILSON: I don't mean to tender that at this time. I do not offer 16 at this time.

THE COURT: It was not offered at this time.

MR. WILSON: Otherwise all right.

MR. O'DONOGHUE: Everything else is in; and these three he is now offering and I have no objection to them.

THE COURT: Very well.

MR. WILSON: So the record will show with the exception of 16, every document which we have identified is now in evidence.

* * *

Plaintiff,

CIVIL ACTION No. 85-67

Defendant.

Thursday, January 16, 1970

Serinity

Defendant's
Second
Copy

* * *

1080

BY MR. WILSON:

Q Mr. Schmitz, I show you what has been marked Defendant's Exhibit for identification Number 24, and ask you if that's a communication from you to Dr. Wehrli with respect to the monthly payments and what is its date?

A Its date is April 29 and it's a communication of mine to Dr. Wehrli dated that date, marked Exhibit 24, of defendant.

1081

Q Can we assume you received remittance?

A I would say so.

THE DEPUTY CLERK: Defendant's Exhibit 25 marked for identification.

* * *

BY MR. WILSON:

Q What was the date of that, Mr. Schmitz?

A April 29, 1961.

Q I show you a similar type of letter marked Defendant's 25, can you identify that as a communication of the next month?

A Yes, sir. This is dated May 26, 1961 from myself to Dr. Ulrich Wehrli marked Defendant's Exhibit 25.

Q Would that be the May payment or the June payment -- would that be, did you refer to it by month?

A It's the interim retainer for June.

Q And you received that, too, I assume, did you?

A I am getting less confident that I did.

THE COURT: What do you mean by that?

THE WITNESS: May I answer what I mean?

MR. WILSON: Sure, because I'd like to know.

THE WITNESS: There was a point in time in '61 when Dr. Schaefer ceased sending me.

MR. WILSON: I am coming to that.

1082

THE WITNESS: Well, okay, that's why I'm not sure.

MR. WILSON: May I have Plaintiff's Exhibit 108, please?

BY MR. WILSON:

Q Mr. Schmitz, Exhibit 108 is your exhibit which is in evidence, but I think it had to do with what you last observed. I am trying to check it before I hand it to you.

MR. O'DONOGHUE: Excuse me a minute, Mr. Wilson.

BY MR. WILSON:

Q Would you see whether this number 108 is the event that you referred to just now? You were concerned about whether remittances continued. You have already identified it. It's in evidence in your case. But isn't that what you had reference to a few moments ago?

THE COURT: Are you offering these other two?

MR. WILSON: May I at this time offer in evidence 24 and 25.

THE COURT: Any objection, Mr. O'Donoghue?

MR. O'DONOGHUE: 24, 25 and 26.

MR. WILSON: I don't think I have gotten to 26.

MR. O'DONOGHUE: I see. No objection.

THE COURT: Without objection they will be received in evidence.

* * *

1083

THE WITNESS: This letter with translation marked Plaintiff's Exhibit 108 is, as you say, refers to that.

THE COURT: Refers to what?

THE WITNESS: I tried to refresh my recollection on your question. It referred to some interruption of my interim retainer.

MR. WILSON: Your Honor, you can see the length of it. I think it would be well for you to hear it at this time. Would you mind?

THE COURT: Not at all.

BY MR. WILSON:

Q Would you like to read it?

A It's marked translation. I assume it's correct.

Q Go ahead and read it. It's from whom to whom?

A It's from Dr. Alfred Schaefer to myself.

THE COURT: Date of it?

THE WITNESS: May 29, 1961.

BY MR. WILSON:

Q Would that be in reply, by the way, to Number 25?
Does he acknowledge receipt of your letter of May 26?

A Yes, sir.

Q That's it. Go ahead.

1084

A "Dear Mr. Schmitz:

"After receipt of your letter of May 25, I have given the order as requested to transfer the accoring amount. Since more than one year has passed since transferring the power of attorney to the trustee, I believe that it has become necessary to limit the arrangement for our collaboration for the time being to the end of June. During my recent visit to the United States of America I was able to see that Mr. Spofford and his colleagues are so well acquainted with the matter that we can consider the introduction as concluded.

"In this first phase, you have doubtless had very great personal merits and I don't want to fail to thank you for your extremely valuable collaboration. Should we be able to liquidate the whole question of G.A.F. within the next few months due to the efforts of the trustee respectively, Mr. Spofford, we of course would be sure to compensate the co-workers of the trustee with a final payment for their work they may have done after June. But at the present it really looks as though we have to come to terms directly with the competent authorities with the help of our attorneys.

1085

"Since our general meeting is very extensive in regard to paying fees if they are not justified for achieving results within a reasonable space of time, I am asking you kindly to understand this limitation of your fee.

"Dr. Wehrli informed me about your letter of May 16. Unfortunately my time in New York and Washington was so completely filled up that it was impossible for me to make all the personal contacts that I would have liked to make. As you know, regrettably, not all of my expectations have been fulfilled and therefore I don't believe that some statements Dr. Wehrli briefly mentioned to me from your letter to me are doing full justice to the whole situation.

"Respectfully. A. Schaefer."

Q Mr. Schmitz, there is a word in there that the Swiss use, and you and I are familiar with it. I wonder if you would be able to say that it always has the translation I am going to ask you about. It's the word "respectively." He says something, "respectively Dr. Spofford." Do you find it in there?

A (Examining exhibit) Mr. Spofford I believe is only mentioned here --

1086 Q Do you mind if I help you? I know it's in here because I heard you read it.

A Here it is.

Q Would you agree with me that the Swiss use that term "respectively" in the sense -- that is to say -- ?

A I beg your pardon. I don't quite understand.

Q The word "respectively." Look at the German word.

A I have to use the dictionary on some of these German words.

Q My point is, is it the same as, i.e., that is to say? The Swiss use it that way?

MR. O'DONOGHUE: What's the German word you are referring to, because I am trying to help you?

BY MR. WILSON:

Q Find the German word.

A This b.z.w. It's really abbreviated as b.z.w.

Q How would you translate that?

A I think it means beziehungsweise, but I don't know if I know what he means by it. I'd like to look at the dictionary.

Q I thought you and I would be in accord that I have seen this a hundred times in Swiss letters. We use respectively in a little different sense. This has always meant to me in
1087 a Swiss letter, that is to say.

A I see.

Q Would you agree that that was a fair interpretation of --

A I would not question it, really. It's a matter of expert translation.

Q It's an awkward phrase to American but we don't use it in the same sense.

A I see.

Q Mr. Schmitz, despite this communication of 108, of Mr. Schaefer to you and the remark that "we are going to cut it off at the end of June," it was not cut off, was it?

A Yes, It was cut off for a while.

Q You mean permanently?

A No, sir.

THE DEPUTY CLERK: Defendant's Exhibit 26 marked for identification.

MR. WILSON: Give this separate letter a different number, please, Mrs. Bassett.

THE DEPUTY CLERK: Defendant's Exhibit 27 marked for identification.

1088

BY MR. WILSON:

Q Mr. Schmitz, I show you Exhibit 26 and 27, both dated June 26, 1961, and ask you if these are communications from you to the bank and/or to Dr. Wehrli?

A (Reading) Yes, sir. Defendant's Exhibit 26 dated June 26, 1961 is written to the Union Bank of Switzerland by me.

Q In effect do you ask for your July payment there? Or is that the June payment?

A It says "my usual directive for payment due me July 1, 1961."

1089 Q Would you have regarded that as the July payment or the June payment on the first of the month?

A Honestly, I could not tell you which way it was.

Q What does the other one say of the same date?

A On the same date this is a separate communication to Dr. Ulrich Wehrli, Vice Director of Union Bank, Zurich, Switzerland, asking him to transfer me by July 1st by cable \$2,000 interim retainer for July.

Q I think it would be well for His Honor to get the continuity if you would be kind enough to read the longer letter of the 26th, don't you?

A Yes, sir. (Defendant's Exhibit No. 28 was marked for identification.)

"Union Bank of Switzerland

"Zurich 1, Switzerland.

"Gentlemen:

"Enclosed herewith you will find my usual directive for payment due me July 1, 1961, for interim compensation for holding my knowledge and time

1090

at the disposal of the matter which is of the greatest interest and for the protection of private property and of the defense of the above interests, pursuant to agreements made, and as covered by offers and acceptances in writings of agreement contained in a series of letters exchanged and delivered during 1960.

"The payments due and made available are initial monthly interim payments on account, limited as specified, for interim services to Messrs. C. Spofford and C.E. Wilson on your behalf.

"Without interruption, we are concerned with a fluid situation, which necessitates the utilization and availability of all capacities and talents dictated by the necessities of the situation as required by the Trustee, for the purposes of the Trusteeship, all as agreed upon.

"The Trustee has been directing me to continue as I have in the past done, without interruption, and, among other things, I am presently engaged in the preparation of a special matter for his consideration, of substantial import and material significance.

"Very truly yours.

"Robert A. Schmitz?

Q Was the first reaction to one or the other of those two letters, or maybe of both, number 28 for identification?

A Yes, sir.

Q Would you read that? It's short. To His Honor.

1090 A This is a letter to me on letterhead of Union Bank of Switzerland, Zurich, July 6, 1961 from Dr. U. Wehrli.

Should I read the letter?

Q Please. It's not long.

A "I am in receipt of your letter of June 26, and am very sorry to have to inform you that I am not in a position to take care of the requested transfer. I believe that really the opinion here is that the monthly payments should not be continued over June 30.

"I am, with kind regards,

"Sincerely yours,

"U. Wehrli."

MR. WILSON: Suppose I offer in evidence, if Your Honor please, 26, 27 and 28.

MR. O'DONOGHUE: No objection.

THE COURT: Without objection they will be received.

1091 THE DEPUTY CLERK: Defendant's Exhibit 29a marked for identification.

(Defendant's Exhibit No. 29a was
marked for identification.)

1092 MR. WILSON: For the record at this time I am not
identifying through this witness, number 29, since it bears
a legend at the bottom, that Your Honor has made a ruling on
previously, and which I will show to Dr. Schaefer when he is
on the stand. But the duplicate of this letter without the
internal legend on the bottom has now been marked 29a and I
am going to show that to the witness with the Court's permis-
sion.

BY MR. WILSON:

Q Mr. Schmitz, you identify that as a letter to you
from Dr. Wehrli?

A Yes, sir. This is a letter to me on the letterhead
of Union Bank of Switzerland dated Zurich, July 15, 1961, signed
Wehrli, for Union Bank of Switzerland..

Q Would you read it to His Honor? It's short.

A Yes, sir. There is a double image here.

Q Yes. It's a bad Xerox.

A One says Dear Bob and then I can see the word Schmitz.
It seems like it's a photostat of two.

Q I will show you 29 now with the legend turned down
and ask you if that's the same letter.

A Okay. I will read from this:

"Dear Bob,

"Referring to your letter of June 26, and my answer of July 6, I have the pleasure to inform you that I am now in a position to give the instruction for a further transfer of US\$2'000.--.

1093

"Hoping yourself and your family are well, I am, with kind regards,

"Sincerely yours,

"U. Wehrli."

Q What's the date of that, Mr. Schmitz?

A July 15, 1961.

Q Now I have got another letter here which was just marked Number 30 of the same date and I am wondering if they are talking about the same payment -- first, is Number 30 from the bank to you?

THE WITNESS: This is another letter of July 15, 1961, on the letterhead of Union Bank of Switzerland, dated Zurich, July 15, 1961. It's a notice saying:

"Dear Mr. Schmitz,

"According to instructions received, we have credited your account with

"US\$2'000.--, value July 15, 1961
as compensation (July 1961)).

"We have given order that the above amount is transferred by cable to your account with the Chase Manhattan Bank, Grand Central Branch, New York.

1094

"Yours sincerely,

"Union Bank of Switzerland."

Two signatures. One is Wehrli and the other I do not recognize.

BY MR. WILSON:

Q Are you satisfied, as I am, that 29, 29a and 30 are all referring to the same payment?

A Yes, sir.

Q Thank you.

MR. WILSON: We offer in evidence at this time 29a and 30.

THE COURT: Very well. Without objection they will be received.

* * *

THE DEPUTY CLERK: Defendant's Exhibit 31 marked for identification.

* * *

BY MR. WILSON:

Q Mr. Schmitz, 31 is a letter with an attachment. I will ask you if it's from you to Dr. Wehrli, what its date is, and what it refers to?

A Well, this is a letter --

1095

Q Its date first?

A Date is July 1st, 1961 -- beg your pardon.

Q Yes.

A It's a letter of mine to Dr. Wehrli, Union Bank of Switzerland, and it refers to a deposit, transfer of \$2,000, as may be convenient after August 1st, 1961, as my interim retainer for August.

Q Mr. Schmitz, 30 refers to the August payment and to expenses, doesn't it?

A Yes, sir.

Q Do you recall that you got the August payment?

A Yes, sir.

Q Do you recall that you did not get at that time the expenses?

A Well, I recall at one point that Dr. Schaefer did not pay me my expenses.

Q Do you know offhand -- I will be able to show you later -- do you know offhand whether there did come a time the \$683.68 expenses shown on the attachment to 31 were paid you?

A I think so, later.

MR. WILSON: I offer in evidence 31, Your Honor.

MR. O'DONOGHUE: No objection.

THE COURT: It will be received.

1096

MR. WILSON: Mr. O'Donoghue, Mr. Strickler and I are concerned about a letter of August 9, '61, from Dr. Schaefer to Mr. Schmitz. The only way we know of its existence -- we do not have a copy -- is because he referred to it in his letter of January 9, 1962. Do you have a letter from Dr. Schaefer to Mr. Schmitz of August 9, '61, or do you need your computer to tell you?

MR. O'DONOGHUE: I don't know whether we have it or not. I know we have given you everything we have. If you haven't it, maybe we don't.

* * *

BY MR. WILSON:

Q Mr. Schmitz, in the meantime I show you Number 32 and ask you if that's a communication from someone to someone?

* * *

THE WITNESS: I remember this. This is a letter -- there is no letterhead, that's the thing.

BY MR. WILSON:

Q I know. I am dismayed about it, too.

A There is a pen-initialled signature so I will say
1097 this is a letter to me dated August 9, 1961, from Dr. U. Wehrli, marked Defendant's Exhibit 32.

Q Is one phase of the letter reference to remitting to you the August payment?

A It refers to acknowledged receipt of my letter of July 26 and proceed to further transfer of \$2,000.

Q So far as you know you received that remittance?

A Yes, sir.

Q The other part of the letter I think has to do with asking you for a report. Would it be in your interest to read that letter? I don't care.

A I can do whatever you wish.

MR. WILSON: Thank you.

I offer in evidence Number 32.

THE COURT: Without objection it will be received.

THE DEPUTY CLERK: Defendant's Exhibit 33 marked for identification.

1098

BY MR. WILSON:

Q Mr. Schmitz, Number 33 is a handwritten letter of August 16, 1961. Can you identify that and epitomize its contents for the Judge, for His Honor?

A You mean paraphrase it or read it?

THE COURT: Can you read it?

MR. WILSON: It's ten lines. Read it. The date.

THE WITNESS: Letter of mine dated August 16, 1961 to Dr. Ulrich Wehrli, Vice Director, Union Bank of Switzerland:

"Dear Ulrich:

"Respecting your request for a note of information on my recently submitted expense statement,

these expenses were paid by me incidental to the performance of the work done as covered by the letter enclosed herewith, and were for office expense and direct secretarial work, telephone charges, and transportation expense to me. There are no expenses for meals or entertainment or any other indirect expenses.

"Yours sincerely.

"Robert A. Schmitz."

1099

MR. WILSON: We offer in evidence Number 33.

MR. O'DONOGHUE: No objection.

THE COURT: It will be received.

THE DEPUTY CLERK: Defendant's Exhibit 34 marked for identification.

BY MR. WILSON:

Q Mr. Schmitz, I show you 34 and ask you if this is a communication from you to Dr. Wehrli under the date stated and what is the date?

A What is the date?

Q Yes.

A The date of this letter of mine is August 28th. It is a letter to Dr. Ulrich Wehrli, Vice Director, Union Bank of Switzerland.

THE WITNESS: This is dated September 27, 1961.

It's marked Defendant's Exhibit 35 and is a letter of mine to Dr. U. Wehrli, Vice Director, Union Bank of Switzerland.

"Dear Dr. Wehrli:

1101

"Enclosed herewith you will find an invoice statement rendered July 26, 1961, of my direct expenses paid during the period indicated for your account.

"Please transfer this amount by cable for deposit in my account at the Chase Manhattan Bank, together with Two thousand dollars (\$2,000.00) interim retainer payable October 1, 1961, totalling \$2,683.68.

"With best personal regards,

"Thank you,

"Sincerely,

"Robert A. Schmitz."

And there is appended here a statement for expenses.

BY MR. WILSON:

Q Here again are you satisfied you got that?

A Yes, sir.

Q Expenses still in suspense?

A Yes, sir.

Q I think they were, too.

A Yes, sir.

MR. WILSON: Your Honor, we offer in evidence 34 and 35.

THE COURT: Without objection they will be received.

* * *

THE DEPUTY CLERK: Defendant's Exhibit 36 marked for identification.

* * *

MR. WILSON: 36 is a German text with English translation. Mr. O'Donoghue, I think you okayed that as an authentic document?

MR. O'DONOGHUE: Yes.

BY MR. WILSON:

Q Mr. Schmitz, I show you 36, which is two parts stapled together, a German text and an English translation attached to it, and ask you, sir, if that is a translation, and if the letter is to you, and if you know from whom it came?

A This is a letter from Dr. Schaefer to me dated 16 October, 1961, together with a paper marked "Translation," dated October 16, 1961, with the initial, "Yours A.S."

Q Alfred Schaefer. I read the translation.

Will you please read it, if the Court will permit you?

THE COURT: You may proceed.

THE WITNESS: Yes.

"Mr. Robert A. Schmitz

"Doubling Road

"Greenwich, Connecticut, USA

1103

"Dear Mr. Schmitz,

" "With some restraint I have asked Interhandel to continue the prevailing payments until the end of the year, even though, in my opinion, the efforts for which you kindly offered yourself, did in no way accomplish what we both expected and surmised.

"But I have to inform you that we have to reserve ourselves the complete liberty to enter a new regulation at the end of the year. It is of no use to continue efforts which, under the present circumstances, can unfortunately hardly lead to any concrete results.

"With best regards I remain

"Yours

"Alfred Schaefer."

MR. WILSON: Offer in evidence, if Your Honor please,
Number 36.

THE COURT: It will be received.

THE DEPUTY CLERK: Defendant's Exhibit 37 marked
for identification.

1104

THE DEPUTY CLERK: Defendant's Exhibit 38 marked
for identification.

BY MR. WILSON:

Q Mr. Schmitz, I show you Number 37 and 38 --

MR. WILSON: Frank, these are identical.

BY MR. WILSON:

Q Mr. Schmitz, I have got them marked now and I might as well account for it in the record. Do 37 and 38 seem to be identical documents?

A (Witness checking documents.) They are not identical at all. They seem to duplicate each other. But -- one my signature is smaller than the other so that one is not a photostat.

Q Is the text the same, though -- would you like me to read it to you because the Court will want to hear it anyway?

A If you wish.

Q "October 30." It's from you to Dr. Wehrli at the Bank.

"Enclosed herewith you will find an invoice statement rendered July 26, 1961, of my direct expenses paid during the period indicated for your account.

1105

"Please transfer this amount by cable for deposit in my account at the Chase Manhattan Bank, together with Two thousand dollars (\$2,000.00) interim retainer payable November 1, 1961, totalling \$2,683.68.

"With best personal regards,

"Thank you,

"Sincerely,

"Robert A. Schmitz."

Does that say that?

A Yes, sir.

Q Does the bill which is attached just say "per statement rendered?"

A Statement rendered July 26.

Q This is a letter which you dispatched, sir, is it?

A Yes, sir.

Q Did you receive the \$2,000?

A Yes, sir.

Q And the expense money is still unaccounted for?

A Still unaccounted for.

MR. WILSON: Offer in evidence 37 and we will announce now that we will not offer 38.

THE COURT: Very well. Without objection 37 is received in evidence.

1106

MR. O'DONOGHUE: No objection.

THE COURT: And 38 is withdrawn.

THE DEPUTY CLERK: Defendant's Exhibit 39 marked for identification.

BY MR. WILSON:

Q I show you Exhibit 39 and ask you here again if this is one of these headless letters, with initials I think you identified -- what is 39, Mr. Schmitz?

A Defendant's Exhibit 39 is a copy of a letter to me of November 2nd, 1961, from Dr. U. Wehrli, Union Bank of Switzerland.

"Dear Bob,

"I am in receipt of your letter of October 30, 1961 and am glad to have been in a position to give the necessary instruction to transfer the amount of US\$2'000.--.

"With regard to the expense note of \$683.68, I am sorry to have to ask you again for more specific details, as mentioned in my previous letters. You answered only that these expenses were in connection with your activities.

"With kind regards,

"Sincerely yours."

Initialed "Wehrli."

Q Mr. Schmitz, what was the month payment for that?

A \$2,000.

Q I mean what month?

A Oh, what month? Well, this is November.

Q It's the same old story, whether they paid the first of the month or the last of the month?

A I'd have to look over the whole record to give an answer on that.

Q Anyway, you did receive remittance on that?

A Yes.

MR. O'DONOGHUE: No objection.

THE COURT: Without objection it will be received in evidence.

THE DEPUTY CLERK: Defendant's Exhibit 40 marked for identification.

1108

BY MR. WILSON:

Q I show you now Defendant's 40, Mr. Schmitz, and ask you if this is your communication to the Union Bank of November 30, 1961 and what does it say?

A Defendant's Exhibit 40 is dated November 30th, 1961 and it's a letter of mine to Union Bank of Switzerland, Zurich, Switzerland, attention Dr. U. Wehrli, Vice Director.

"Gentlemen:

"Upon receipt of these instructions, please transfer by cable my regular monthly interim retainer for December of \$2,000.00, together with the amount

due me as per invoice statements rendered in past months, to Chase Manhattan Grand Central Branch.

"Other direct disbursements out of pocket and other expenses will be accounted for at a later date.

"Thank you,

"Yours truly,

"Robert A. Schmitz."

Q From your reading of that text, Mr. Schmitz, are you willing to say that the payment made, or the request made on November 30, was for the December payment?

A Yes, sir.

1109

Q Thank you.

We offer in evidence, if the Court please, Number 40.

THE COURT: Without objection it will be received in evidence.

* * *

BY MR. WILSON:

Q Did you receive this December payment?

A Yes, sir.

THE DEPUTY CLERK: Defendant's Exhibit 41 and 42 marked for identification.

* * *

BY MR. WILSON:

Q Mr. Schmitz, look at 41 and 42 -- 41 is dated December 19, and ask you if you can identify those letters?

A Defendant's Exhibit 41 is dated December 15, 1961. It's a letter from Union Bank of Switzerland to me from the office of Dr. U. Wehrli.

"Dear Bob,

"I should like to send you my best thanks for your long letter you kindly mailed me.

"With regard to the expenses, I am trying again to get the necessary funds to be able to transfer to you the corresponding amount.

1110

"With my best wishes for Christmas and New Year, I am,

"With kind regards,

"Sincerely yours,

"U. Wehrli."

Defendant's Exhibit 42, dated Zurich December 19, 1961, is from Union Bank of Switzerland.

"Dear Sir,

"According to instructions received, we have credited your account with

"US\$683.68 value December 19, 1961

for expenses.

"Yours sincerely,

"Union Bank of Switzerland."

Signed Wehrli and another signature that I do not recognize.

Q At long last the expense money came in; is that right?

A Yes, sir.

MR. WILSON: We offer in evidence these two documents if the Court please. Number 42 and 43.

MR. O'DONOGHUE: No objection.

1111 THE COURT: They will be received.

THE DEPUTY CLERK: Defendant's Exhibit 43 marked for identification.

BY MR. WILSON:

Q Mr. Schmitz, here is another letter dated December 19, which has been marked Defendant's Exhibit for identification 43. I ask you if despite the lack of a masthead, if you can identify that from your recollection from the appearance of the document?

A Despite the lack of a masthead, I would say that this was a letter from Union Bank to me, it is dated December 19, 1961 from the office of Dr. U. Wehrli.

"Dear Bob,

"Referring to my letter of December 15, I am glad to inform you that I am finally in a position to execute the transfer of \$683.68 for expenses as per your statement of July 26, 1961. I have given the

necessary instructions to send this amount to your account with the Chase Manhattan Bank, New York, Grand Central Branch."

1112

"At the same time I am informed to let you know that no commitment will exist for the time from January 1, 1962, on, and that the whole situation will have to be examined anew.

"With my best wishes for Christmas and a happy New Year, and with kind regards, I am

"Sincerely yours,

"Wehrli."

Q Mr. Schmitz, what is the date of that letter?

A December 19, 1961.

Q Despite that letter did you write Mr. Wehrli on the date of December 27th as per Defendant's Exhibit for identification 44?

THE WITNESS: (Reading) Yes. This is a copy of a letter of December 27, 1961, marked Defendant's Exhibit 44, to Dr. Ulrich Wehrli, Vice Director, Union Bank of Switzerland.

"Dear Doctor Wehrli:

"Upon receipt of these instructions, please transfer to my account at the Chase Manhattan Bank, Grand Central Branch, Two thousand dollars (\$2,000.00), representing my regular monthly payment due on account of interim services for January 1962."

1113

"Very truly yours,

"Robert A. Schmitz."

MR. WILSON: We offer in evidence 43 and 44.

THE COURT: Without objection they will be received.

* * *

BY MR. WILSON:

Q Mr. Schmitz, your counsel had you identify Plaintiff's Exhibit 122. I don't think it was read to His Honor at the time.

In fairness, since that is your reply to Mr. Wehrli's letter of the 19th, Number 43, you may want to have it read.

MR. WILSON: May he read it?

THE COURT: Yes.

THE WITNESS: (Reading)

"Union Bank of Switzerland

"Zurich 1, Switzerland.

"Att.: Dr. Ulrich Wehrli, Vice Director.

"Gentlemen:

"Thank you for your letter to me from Dr. Wehrli of December 19, 1961.

"It is true that it is good to examine situations with the cooperation of parties with whom one is under obligations in important associated undertakings which involve substantial interests.

1114

"Enclosed you will find my regular monthly demand for transfer of interim payment due me on account.

"Your letter to me of December 19, 1961, if carried out, will be a unilateral action against an existing contract not yet terminable, which will necessarily result in its breach and substantial damages.

"The Trustee has an interest of his own in the subject matter of the powers, and not in merely what is derived or produced by the exercise of the powers which makes these powers absolutely irrevocable.

"The concrete position of the Trustee is, that the powers themselves confer upon the Trustee the exclusive right to determine in his own judgment the manner of sale of the stock and the purchasers of the stock control of G.A.F., a matter of vital interest to the Trustee personally and as a member of his Government on former occasions, and moreover a matter of vital interest to his Government, and, in the final analysis, of even greater import to the present swiss owners."

1115

"In the construction of these powers, the design and object of the parties must be kept in mind, and the

powers must be construed not only with reference to the language used, but also in light of all the surrounding circumstances in order to give effect to the actual intention of all the parties, and thereby carry out rather than defeat the purposes of the powers themselves.

"Sincerely yours,

"Robert A. Schmitz."

BY MR. WILSON:

Q What you have just read is Plaintiff's 122 dated December 27, 1961, isn't it?

A Yes, sir.

Q Your counsel had you identify Plaintiff's Number 123 which is in a German text with an attached translation and also the envelope. Was that in reply to your letter of December 27, and what is its date, and to whom and from whom is that letter?

A This is Plaintiff's Exhibit 123 dated 9 January, 1962, and is a letter from Dr. A. Schaefer, President of the General Management of the Swiss Union Bank. It's written to me by Dr. Schaefer and has appended what is marked as a translation.

1116 Q Mr. Schmitz, I could read it, or do you mind for continuity's sake -- if the Court will tolerate it -- reading this to the Court, please?

THE COURT: I will be glad to have you read it, Mr. Schmitz.

THE WITNESS: (Reading)

"My very dear Mr. Schmitz:

"I acknowledge the receipt of the copy of your writing addressed to Union Bank of Switzerland, of December 27, attention of Mr. Dr. Wehrli, and would like to adhere to the following:

"First of all I must point out, that the business which you brought into discussion is not one with which Union Bank is concerned. Further, I wish to emphasize again that we never were speaking of undertaking certain remuneration for an indeterminate time.

"During the course of the past year and already before I have repeatedly brought to your attention that the earlier contemplated remuneration could not be carried on to an invisible time. I would especially like to reproof the writings of 30 August 1960, 29 May 1961, and 9 August 1961. Anew, I set forth this state of the case to you in my letter of October 16, 1961."

1117

"As a matter of fact, we also have since many months not received any reference to any occupation on your part. At great distance occasionally communications of purely general theoretical species have

come to us. A report concerning any special activity were not contained in these communications.

"In your letter you further refer to the 'Position of the Trustee'. I hardly believe, that your construction covers the reality of the state of affairs and the opinion of the other gentlemen. On the occasion of my last visit to the U.S.A. I had the opportunity, precisely also on this point to discuss in great detail with both gentlemen. I could once again state the grounds because of which a direct contact was necessary with the U.S.A. Government. As you know, Mr. Charles Wilson confirmed to me already more than a year ago, that he would lay down at any time the functions transferred at the time, when this should be deemed purposeful for the matter. In a business affair of such widely ramified dimensions requires it self-evidently always the new revision of the situation and the fitting to the given conditions. Also regarding this I know I am in agreement with the other gentlemen.

1118

"I therefore want to merely repeat, what I already said in my letter of 16 October and deem this business as settled.

"With kinding greetings I remain

"Yours,

"A. Schaefer."

THE COURT: That's a translation?

THE WITNESS: Yes, sir.

BY MR. WILSON:

Q Mr. Schmitz, did you send your Exhibit 124 dated January 17, 1962 to Dr. Schaefer in reply to his letter, whose contents you just completed reading to His Honor and which is Exhibit Number 123?

A Yes. This Plaintiff's Exhibit 124 is a letter of mine dated January 17, 1962 to Dr. Alfred Schaefer, President of The General Management, Union Bank of Switzerland, Zurich, Switzerland. Should I read the letter?

Q Leave it just a second. We won't forget the question of whether you should read it or not. It's three pages.

I want to show you your Exhibit 125 and ask you if on the same date you cabled Mr. Saager as per the salmon-colored sheet, and whether the reply from his secretary was the more
1119 yellowing sheet?

A (Witness examining exhibits) The salmon-colored sheet appended as part of Plaintiff's Exhibit 125 is a carbon copy of a cable of mine dated -- well, I cannot find the date.

Q Does the reply identify the cable by date?

A Well, the reply is dated January 18th.

Q It was about this time?

A Yes, about a day.

Q Read the salmon-colored copy which you dispatched to His Honor, will you?

A That is a cable of mine to Bruno Saager, Union Bank. "Trusteeship powers operating hundred percent intact and trustee position precisely as per letter 27th. Stop. Schaefer attitude confused error and could mislead Swiss to unnecessary difficulties. Stop. Urging careful restraint. All plans conform to lawful reality of powers with best interest of our organization in mind. Pending clarification reconciliation. Kindest personal regards to you and Mrs. Saager."

Signed Robert A. Schmitz.

Q And the reply you got from Mr. Saager's secretary says what?

A Mr. Saager being away on holiday will revert soonest. Regards. Miss Fritz, Secretary.

1120 Q Turning back to your 123, which is letter of January 17th, I think you said, and the copy shows it, you sent a copy of it to Mr. Saager?

A Yes, sir.

MR. WILSON: Your Honor, I know Mr. Schmitz regards this as an important letter but it's almost three pages. Can you endure it?

THE COURT: Would you like him to read it?

MR. WILSON: Yes.

THE WITNESS: (Reading)

"Dr. Alfred Schaefer,

"President of The General Management,

"Union Bank of Switzerland,

"Zurich, Switzerland.

"Dear Doctor Schaefer:

"I have your letter of the 9th of January, 1962, in reply to my communication of 27th of December 1961, addressed to Union Bank attention Dr. Wehrli, Vice Director, and it is indeed difficult to understand how you can entertain the views expressed therein which are so contrary to the relevant facts and circumstances.

1121

"Preliminarily: I call your attention to the fact that my June 26, 1961, letter was similarly addressed to the Union Bank, without objection of any kind and in my letter of May 4, 1960, I stated:

'I assume that Union Bank will be able to adjust with Interhandel any and all costs necessarily incurred, when and as they both see fit.'

"And the record will rather conclusively establish that I, in fact, did keep you posted as to my activities on your behalf in rendering interim spec-

ial services to both the Trustee, C.E. Wilson, and his attorney, Mr. C. Spofford, and placing at their disposal my precise personal knowledge of the multitudinous matters constituting the involved and complex background going back to the stock seizure by the United States Government in 1941. For example, in my letter addressed to Union Bank, attention Dr. Wehrli, of June 26, 1961, I stated:

'Without' interruption, we are concerned with a fluid situation which necessitates the utilization and availability of all capacities and talents dictated by the necessities of the situation as required by the Trustee, for the purposes of the Trusteeship, all as agreed upon.

1122

'The Trustee has been directing me to continue as I have in the past done, without interruption, and, among other things, I am presently engaged in the preparation of a special matter for his consideration, of substantial import and material significance.'

"You state - etc -

'During the course of the past year and already before I have repeatedly brought to your attention that the earlier contemplated

remuneration could not be carried on to an invisible time."

1123 "When I succeeded in obtaining for Interhandel the consent of such an outstanding personality in business and public affairs as Mr. Charles E. Wilson to accept irrevocable Trustee powers whereby he had the exclusive right to determine in his own judgment the manner of sale and the purchasers of the stock control of G.A.F. and bring about the withdrawal of the U.S. Government's custodial interests; and his acceptance was given and received in the most formal manner known to the law, my services as finder for Interhandel were in all respects completed and as was well understood, only the payment to me of the very substantial finder's fee of at least 5% of the moneys derived from the concluded sale, was deferred until such moneys come to hand. The record will show not only Interhandel and its officials but you also were fully appraised that Mr. Wilson's business judgment, experience, integrity and general all around capabilities were of world renown.

"Thereupon and thereafter, at your special solicitations, I agreed to continue to devote my time and place my special knowledge of these long drawn out proceedings and complex matters at the disposal

of Mr. Wilson and his attorney, Mr. C. Spofford. I have to date faithfully and fully performed these services.

"All my time for over eighteen months has been devoted to such services and rendition thereof; and the monthly advancements when made of \$2,000.00 were on account only. Thus in my letter of June 26, 1961, I specifically stated:

'The payments due and made available are

"initial monthly interim payments on account,

1124

limited as specified, for interim services to Messrs. C. Spofford and C.E. Wilson on your behalf."

"You in effect complain that these interim services have been unduly prolonged but you, alone, personally, are at fault and the cause of the delay.

"In August of 1961 the Trustee's negotiations, under his irrevocable powers, had proceeded to and into their final stages; all preconditions of the Government had been met and had you refrained, as you must certainly should have done, from injecting yourself into this still fluid and critical situation, without the knowledge or consent of the Trustee, the contemplated action, the subject matter of the powers could and would have been brought to a

final and complete termination to the entire satisfaction of all parties concerned before January 1, 1962.

"Such unwarranted activities on your part not only abruptly suspended the normal course of such conclusory proceedings but have placed a very heavy additional burden upon the Trustee and his attorney in coping with the adverse affects of your doings.

1125

"The payments which have been made on account of my aforesaid interim services leave a very large balance still due and payable forthwith, as you state no further on account payments will be made and my interim services are terminated.

"This balance is in the reasonable sum of \$112,000.00, not inclusive of unpaid expenses, and I will thank you to arrange for the remittance to me without delay.

"Very truly yours,

"Robert A. Schmitz."

Carbon copy to Mr. Bruno Saager.

BY MR. WILSON:

Q Did you get a reply from Dr. Schaefer to that?

A No, sir, he never replied to me.

Q To your recollection, does Number 124, the letter which you have just completed reading, contain the only time

in your communications with Dr. Schaefer or with any other representative of Interhandel or any representative of the Union Bank of Switzerland, you mentioned a five percent finder's fee?

A No, sir.

Q You mentioned it elsewhere?

A Verbal communications.

1126 Q I asked you whether anything written?

A Oh, written. No.

Q You are satisfied this is the first time you wrote the words five percent finder's fee?

A No. I wrote the words five percent finder's fee on other occasions.

Q To these gentlemen -- earlier than that date?

A Oh, no, no.

Q Not earlier than this date. So I am right in saying this is the first occasion when you have written to any representative of Interhandel or any representative of Union Bank the words five percent finder's fee; right, sir?

A I would say yes.

Q Now, when Mr. Saager came back from his vacation, did he write you Plaintiff's 126?

A Yes, he wrote me Plaintiff's 126.

Q Under what date, sir?

A Zurich, February 15, 1962.

Q Would you mind reading that, sir?

A Not at all.

"Mr. Robert A. Schmitz

"Doubling Road

"Greenwich, Conn. USA"

1127

"Dear Mr. Schmitz,

"You were good enough to send me a copy of your letter of January 17 to Dr. Schaefer and my secretary cabled you, in reply to your wire of January 16, that I was away from Zurich. I would therefore like to answer your letter on my part.

"As far as I understand, your letter hinges on the continuation of certain payments to you. As you know, I have up to now always maintained that you get this amount. But I must frankly tell you that I could do this only as long as I myself considered it justified. Actually, in Spring 1960 we all were of the opinion that within a few months it should be possible to see the shaping of a solution and we waited till the end of 1960 for the outcome. But nothing happened and now that another year has gone by I cannot see a possibility of reaching another attitude than that which Dr. Schaefer has given you already.

1128

"I was completely surprised at your further explanations and claims in regard to a "finder's fee". This attitude is, in my view, contradictory to what you told me and the other gentlemen time and again, so that I can actually see no basis for such claims. Needless to say, I would also have been highly pleased if the hopes we entertained at the time of the beginning of our cooperation would have materialized. I do not think there is any ground for reproaches against us. Since Spring 1960 almost two years have elapsed. I do not doubt that we would have been informed if the way that was chosen at the time had led to practical preliminary steps and to possibilities of success. This, however, was not the case. Frankly, we were unable to dispel the feeling that the whole matter was not handled with the competent departments in Washington with sufficient energy and what news we got was received only after our most insistent demands.

"Yours very truly,

"B.M. Saager."

Q In numerical continuity your counsel identified Number 127, under date of February 14, 1962.

A This is Plaintiff's Exhibit 127 dated February 14, 1962 and is a carbon copy or a carbon -- wait a minute -- it

1129 may be an airmail original -- I don't know -- but it's a copy or is a text of a letter of mine dated -- no, it's marked copy up here. February 14, 1962, addressed to Dr. Alfred Schaefer, Chief General Manager, Union Bank of Switzerland with carbon copy to Mr. Saager and with registry receipt appended.

Q Would you read it, sir?

A Yes, sir.

"Dear Dr. Schaefer:

"This letter is written to you in order to be certain that you have been informed and fully realise that there is in existence an affidavit containine extensive factual material directly relevant and singular to the crucial issues affecting the U.S. Government-G.A.F.-Interhandel.

"The existence of this document, an affidavit of my father Mr. D.A. Schmitz, is known to the United States Department of Justice, through Gordon Eakle, Esq., his Washington Counsel, who made casual reference to it several months ago to Mr. A. Ohmann. However, by specific instruction of deponent, he refrained from revealing the material contents thereof.

"To date, this affidavit has been kept in completely restricted circulation, although the Trustee and his Counsel Mr. Spofford are entirely familiar with it."

1130

"It must be pointed out that this affidavit is not a Trusteeship document, and is not by right privileged and immune from subpoena, such as by the Congress for example. Thus, the Trustee does not have any control over its disposition. Furthermore, deponent himself cannot feel assurance of continuing control of the uses and effects of uses to which it may be put eventually.

"To my direct knowledge, the restriction of this material to date has occurred by virtue of the fact that my father has expressed his friendly concern for the Stockholders of Interhandel consistent with his fundamental concern for his Country, through deference to the Trustee.

"With great care, the uses and good effect of this material was envisaged to be handled in order that Interhandel be able to benefit properly from first consideration of its revelations, which will decidedly affect situations presently faced as well as final dispositions.

"I state in all conscience for the record that it has been my earnest desire and objective for months to enable the management of Interhandel to fully provide its Stockholders with every benefit

1131

the power of authentic knowledge makes effective in this matter through such documents near at hand. Early benefits entirely consistent with handling desired by the Trustee program serving Interhandel's best interests have been made impossible already for some months by now, due entirely to the disruptions of record.

"Very Truly YAurs,

"Robert A. Schmitz

"cc: Mr. Bruno M. Saager."

Q Mr. Schmitz, let me ask you, is 131, Plaintiff's Exhibit, is that the affidavit to which you refer?

A Yes, sir.

Q When that affidavit was in evidence, and I began cross-examining you about it, I asked you after searching for a word and saying that you probably wouldn't like it, I asked you whether the submission of that affidavit and the information going to Switzerland was somehow a threat to the Swiss?

A In no way.

Q Were you at this point intending to extend a benefit to the Swiss by delivering this affidavit to the Department of Justice?

A Yes, sir.

1132

Q Did you receive from Dr. Schaefer Number 128 in answer to your 127?

A Yes, sir.

Q Would you read this?

A This is Plaintiff's Exhibit 128 from Dr. A. Schaefer to me dated Zurich, 22 February, 1962, with translation, what is marked as a translation appended:

"Mr. Robert A. Schmitz

"Doubling Road

"Greenwich, Connecticut, USA

"Dear Mr. Schmitz,

"Thank you for your letter of February 14. I have no additional news regarding the affidavit you mentioned; I am grateful to you for bringing it to my attention. But unfortunately I have difficulty in making myself a picture of the contents of this statement from your letter.

"As I have had previously the opportunity to tell you, we are here very little informed about the steps taken by Messrs. Charles Wilson and Spofford during the past year and therefore I don't know in what way it was intended to make use of this document which is unknown to me. Should I, as intended, be again in the States in the near future, I would, of course, like to talk about this with the gentlemen.

"Best Regards,

"Schaefer."

Q On or about the same time did you receive from Mr. Saager, 129, in answer to your transmittal of the affidavit?

A Yes.

Q Read it to His Honor and give it the date, please.

A It is Plaintiff's Exhibit 129, which is a letter from Bruno M. Saager, General Manager, Union Bank of Switzerland, in the English language.

"Mr. Robert A. Schmitz

"Doubling Road

"Greenwich, Connecticut, USA

"Dear Mr. Schmitz,

"Many thanks for having sent me a copy of your letter of February 14, to Dr. Schaefer.

"I took note that a certain affidavit had been issued. However, I feel very sorry that I have never heard about any details concerning this affidavit.

"Yours sincerely,

"B.M. Saager."

1134 Q By the way, I think this has been established by the record. Pursuant to your letter of January 17 to Dr. Schaefer, that you read the three page letter in which you referred to \$112,000 still due you on interim payments for interim services, did you issue a sight draft on Interhandel to the Union Bank of Switzerland for that sum?

A I issued a sight draft. I'd like to look at its face.

THE DEPUTY CLERK: Defendant's Exhibit 45 marked for identification.

BY MR. WILSON:

Q Mr. Schmitz, is Number 45 Defendant's for identification, the sight draft that you and I have just been talking about?

A Defendant's Exhibit 45 is a photostat of a sight draft number 68754 dated New York, New York, February 27, 1962, in the amount, face value \$112,000 payable at sight to the order of Robert A. Schmitz at Chase Manhattan Bank Grand Central Branch, New York. \$112,000 value received and charge same to a Robert A. Schmitz. It was to Union Bank of Switzerland. It was to attention of Dr. A. Schaefer, General Manager, Union Bank of Switzerland, agent for Interhandel A.G. Zurich, and it
1135 has my name spelled out and my signature.

Q Mr. Schmitz, Exhibit 45 was not honored, was it?

A It was dishonored.

MR. WILSON: We offer in evidence 45.

THE COURT: Without objection it will be received in evidence.

1138

BY MR. WILSON:

Q Mr. Schmitz, at the short recess, you had identified 46, I think, as a letter which you wrote to Mr. Saager on or about its date, and would you repeat its date?

A It is dated Thursday, March 22, 1962.
I want to offer it in evidence and have it read.

MR. O'DONOGHUE: I have no objection.

THE COURT: Without objection, it will be received in evidence and Mr. Schmitz may read it.

THE WITNESS: "Thursday, March 22, 1962.

"My dear Mr. Saager:

1139

The leading position of Union Bank-Interhandel, its "time being also money too, have always been very important to me.

"Facts alone count.

1. Government Officials may hold against you and try to put you in poor positions, but, they can not argue against the Government's own official documental public record findings!

"In face of these they may not delay, because publication of the facts would be unbearably embarrassing without their cooperation with you.

"I have for you, with me, the facts. The Official FINAL REPORT of the Senate Judiciary Committee on Alien

Property, condemning "confiscation policy" proved to be the work of Communist Espionage rings.

"From this, I have a series of 5 Articles, Ready for Press Editorial use, documented working Trustee papers, which cover:

"A. FOREWORD: On Discoveries against the Security of America's Economic System.

"B. Confiscatory Expropriation:

A weapon of Communism bearing against the United States. How to lead out of Communism's Entrapment.

"C. Communist Conspiracy and Confiscation:

Objectives and methods of Economic Warfare
1140 "against the United States through diversion of Administrative Authority.

"D. Relevations of Congressional Investigation:

Confiscation in light of Today's Realities, Dangers, and National Interest.

"E. Vesting Transformed to Communist-Oriented Policy of Confiscation:

1. The Subversion of the United States.
2. Sequestration - The Historic Position
3. Vesting-Confiscation Policy by Subversion!

"The Exceptional matter of Interhandel is directly connected to this record, a Key Matter!

"2. Also, I have the Trustee's initial framework of a program which, by its adoption, would make the name of Union Bank outstanding in international leadership to solve the #1 capital-credit security-fundamental unity needed in the free world economy today!

"These matters must be taken up and published and are matters of interest to Congress.

"I want you people to benefit 100%.

"I can mean hundreds of millions of francs plus intangible advantages to all of you.

"I shall call you at 2:30 to see if you are

1141

"Interested. I will be happy to match my time with yours.

"Respectfully yours,

"Robert A. Schmitz"

BY MR. WILSON:

Q Do you remember whether you did call him?

A Yes, I did.

Q Do you remember the substance of your conversation?

A Well, I had a series of meetings with Mr. Saager in Zurich at the time.

Q Were you in Zurich at the time you wrote this letter, or not?

A May I look at the letter? (Examining) In '62, I was in Zurich around Easter-time.

Q March 22nd.

A Yes, I was in Zurich.

Q Mr. Schmitz, attached to your Exhibit 109 is a document. Would you be able to say whether that is a copy of the document which you sent to Mr. Saager with your letter, Number 46?

A Plaintiff's Exhibit 109, dated August 15, 1961 is a letter to Charles E. Wilson, Esquire, as Trustee---

Q That isn't the point. My point is---

A --with appended. Yes, appended to here is what I transmitted to Mr. Saager.

1142 Q That's what I wanted. Thank you.

A Yes, sir.

Q Appropos of your father's affidavit, let me just go back to that for a moment with two documents.

THE CLERK: Defendant's Number 47 and 48 marked for identification.

BY MR. WILSON:

Q I show you 47 and 48 being cables -- No. One is a telegram; 47 is a telegram---

A Yes.

Q --and 48 is a cable. You were in Europe on 43, I think, perhaps?

A Yes.

Q Can you identify both of those cables, telegrams?

A Yes, I can.

Q In numerical order, would you read them, sir?

A Yes, sir. Defendant's Exhibit 47 is a telegram to Gordon Eakle, Esquire, 3526 Woodbine Street, Chevy Chase, Maryland, from my late father, Dietrich A. Schmitz.

MR. O'DONOGHUE: What's the date?

THE WITNESS: Dated March 17, 1962.

"HEREBY DIRECT YOU TO DELIVER AND DISCLOSE MY
AFFIDAVIT NOVEMBER 19 1961 TO DEPARTMENT OF JUSTICE
"CIVIL DIVISION, CHIEF, MONDAY MARCH 19. REGARDS.

DIETRICH A. SCHMITZ"

Q Then, what is the next number?

A The next number is Defendant's Exhibit 48.

Q Is that a cable from you to Mr. Wilson?

A Yes, sir. This is a cable from me to Mr. C. E. Wilson, dated 19th of March 1962, from Zurich:

"C.E. WILSON,

437 Fifthavenue Newwork

"Airmailing you letter reporting and
confirming exactly my independent voluntary free

activities necessarily entirely consistent principal
best interests stop inform you affidavit delivery
simultaneously arranged washington zurich today.

"Respectfully Bob."

Q Before you left Zurich, did you right Exhibit 49
to Mr. Saager?

A Yes, sir.

Q What is its date, sir?

A Its date is April 9, 1962.

MR. WILSON: If your Honor please, going back to
the two cables, I offer them in evidence, number 47 and 48
respectively.

MR. O'DONOGHUE: I have no objection.

1144

THE COURT: Without objection, they will be
received.

MR. WILSON: I also offer Number 49.

THE COURT: Any objection?

MR. O'DONOGHUE: I don't know anything about 49.
It hasn't been identified. (Examining document) You
have identified it, have you?

THE WITNESS: Yes, sir.

MR. O'DONOGHUE: I have no objection.

MR. WILSON: I offer it in evidence, your Honor.

THE COURT: It will be received in evidence.

(Defendant's Exhibit 49 received.)

MR. WILSON: Will you read it, Mr. Schmitz, please?

THE WITNESS: Yes, I will. This is on my personal letterhead dated Zurich, April 9, 1962, addressed to:

"Mr. Bruno M. Saager,
General Manager,
Union Bank of Switzerland,
Zurich

Dear Mr. Saager:

1145 "The objectives of my visit here as expressed to Interhandel have been fulfilled. Indeed, I extended my "stay at your suggestion, in order that and whereupon all relevant topics were constructively ascertained as considered, in our matter wherein nothing which transpires may be hidden.

"I have decided to return to New York.

"The key facts and justness and practicability of your cause, established and realised under the Trusteeship have been fully disclosed to Interhandel, and the drawbacks of unilateral disunited activities remain corollary.

"Further records, realities, and programs may readily be inspected and evaluated between Board Members and associates of Interhandel and its Trustee in New York.

Yours very truly,

Robert A. Schmitz."

Q I show you your Exhibit No. 130 and ask you if that is a reply to Defendant's Exhibit 49?

A (Witness read exhibit). Plaintiff's Exhibit 130 is a letter from Bruno M. Saazer, General Manager, Union Bank of Switzerland, dated April 19, 1962, with translation. Shall I read it?

THE COURT: To whom is it addressed?

THE WITNESS: It is addressed to me.

1146

BY MR. WILSON:

Q Please, Mr. Schmitz.

A "Dear Mr. Schmitz:

"Shortly before leaving for the Easter holidays, I want to acknowledge receipt of your letter of April 9. I enjoyed seeing you in Zurich, and I was sorry you had to return to New York and I could not talk with you again.

"Meanwhile, I heard that through your attorney you voiced again the claims previously made. Dr. Schaefer is on vacation at present, and will be back in about a week. I principally don't want to voice an opinion concerning these claims, even though they certainly lack any substantiations. But as you know, I always believed that the financial side of this

matter would be handled fairly, and I am sure that some way will be found.

"Today I want to ask you above all, not to make any further contact with the Justice Department concerning the affidavit you worked out or any other matter because this would only lead to confusion, which would not help the matter any.

"Best regards,

/s/ Bruno Saager."

1147

Q Mr. Schmitz, Mr. Strickler and I are not sure about this date which has been written by him in pencil at the top of Number 50.

THE COURT: Plaintiff's 50?

MR. WILSON: Defendant's Number 50 for identification.

BY MR. WILSON:

Q It seems to have been sent by you to Mr. Saager. I want you to look at it and see if you can identify it as having been sent by you and in relation to Mr. Saager's letter of the 19th, which is Plaintiff's Number 130.

A (Examining document) Well, this is a Xerox.

Q You're referring to the telegram?

A Yes, this Defendant's Exhibit 50 -- it has a pencilled notation.

Q I told you that's ours. Don't let that guide you.

A Well, I seem to see this very faint marking of April 26 on there, and therefore---

Q Of '62?

A I would, by deductive reasoning, say '62, from the text, so I would identify that as '62.

Q Do you identify that as a cable you sent to Mr. Saager?

A Yes, sir, it's a cable I sent to Mr. Saager, Bank Union.

1148 MR. WILSON: I've shown that to Mr. O'Donoghue. I would like to offer in evidence Number 50 and ask Mr. Schmitz if he would be kind enough to read it.

THE COURT: Without objection, it will be received in evidence, and I ask Mr. Schmitz to read it.

(Defendant's Ex. No. 50 received.)

THE WITNESS: I will try, your Honor. It's very faint.

"RELET YOURS NINETEENTH, PLEASE NOTIFY ME
CONFIRMATION MY MONIES PER STATEMENT DEMANDS PLACED
IN MY ACCOUNT, UNION BANK, AND ARRANGE TWENTY THOUSAND
DOLLARS OF IT CABLED TO ME AT CHASE MANHATTAN BANK,
IMMEDIATELY. THANK YOU. REGARDS.

ROBERT A. SCHMITZ"

BY MR. WILSON:

Q I think that this is the testimony in this Court -- Mr. Strickler was conducting the examination: Did Mr. Ulrich Wehrli visit you in the States soon after this exchange of telegram and letter? What I'm getting to: I think I heard him testify that he offered you \$20,000.

A I will never forget that one!

Q Did he or not?

A What?

Q Offer you \$20,000?

1149

A I wouldn't discuss it with him. He came to my attorney's office---

Q I'm not asking you what your retort was.

A I'm saying, there was no discussion. In other words, I heard from my attorneys that he had. I don't remember him doing it to me.

Q Just to put this ton on events, do you remember Dr. Edmund Wehrli and I met you in Nugent & Nugent's office in the summer of '62?

A The precise date, I would not know. I remember the occasion, yes.

Q And that we denied all liability in this case on behalf of Interhandel, sir?

A I recall the meeting and I remember---

Q I was a right warm one, a right acrimonious one?

A The term "acrimonious" was simply--- I wouldn't say it was acrimonious. I think it was one in which I stood firm on my positions, and you were doing your job; and I think at one point, when I told you that what you were talking -- I think I used the words--- Let me try and recall: I said, whatever you're saying was not germane; and I think you kind of blew up and stomped out of the room. So, you know, to characterize that one, Mr. Wilson, would be---

1150 Q Would it be fair to say, I got out of the room before Mr. Nugent threw me out?

A Just about. Just about. Just made it!

Q Well, the sum and substance of it, Mr. Schmitz, was that you asserted your claims and we denied them on behalf of Interhandel, didn't we?

A Yes, sir. I would put it that way. That's putting it mildly.

Q Let's see if I can clear up something else and quit. Mr. Schmitz, I want to show you again your Number 118, which is the 30-page -- I think it is 30 -- handwritten communication by you to Mr. Saager of Monday, November 6, 1961, and I am going to ask you to look at the original that I have had Xerox'd -- I don't want to go through that whole thing, I assure you.

A Yes, sir.

Q I want to turn to page 10, and ask you if on page 10 you began to number a number of paragraphs?

A (Examining document) Yes, sir. First, I should identify it as my letter.

THE COURT: Is it an exhibit in the case?

MR. WILSON: Yes, it is an exhibit.

BY MR. WILSON:

Q Yes, it's already in through your counsel.

A It is entered as this?

1151

A All right. Well, what I have in my hand is my original letter which is Plaintiff's Exhibit 118, and this is in my hand, and it is dated November 6, 1961, to Mr. Säager, and the answer to the question Mr. Wilson---

Q Did we establish the date to be November 6, 1961? Fix the date.

A November 6, 1961.

Q Would you read that number one paragraph on page ten? It isn't long. It's about eight lines.

A Yes. "1. By August-September 1961, substantially all pre-conditions had been met despite evident attempts from Switzerland to undermine and disrupt the work between Trusteeship and the Government! After the visit had here in May, word circulated from Wall Street that the Trusteeship would not last much

longer; an error. Concepts of percentage splits, whether 50-50, 75-25 or what, stood to be rejected from the needs of the United States as much as any other, and were so by the Trustee and the Government."

Shall I read any further?

MR. WILSON: No, thank you.

* * *

1153 1:45 p.m.

AFTERNOON SESSION

Whereupon,

ROBERT A. SCHMITZ

Plaintiff herein, resumed the stand for further cross-examination and testified further as follows:

CROSS-EXAMINATION (Continued)

BY MR. WILSON:

Q Mr. Schmitz, in your services for Mr. Wilson, were you giving him the same quantity of detail that you were Mr. Spofford?

A Well, I would like to answer that. It's hard to define that. You say, "quantity"? It couldn't logically be the same. There would have to be a difference in the quantity.

Q Was there a difference in the quality? In other words, were you telling Mr. Spofford factual details regarding the history of Interhandel while dealing with Mr. Wilson on a more or less current basis of Senate hearings and things of this sort?

A Well, I would give Mr. Spofford whatever factual information he asked of me or whatever Mr. Wilson, as Trustee, asked that I discuss with him. As to Mr. Charles E. Wilson, I would give Mr. Charles E. Wilson such answers, to the best of my ability to whatever was currently coming up, either in the diplomatic areas or he would ask me information on Aniline, its products, it's seizure, its history, matters relating to--- Like when von Brentano, the German Foreign Minister, came to Washington early in 1961, he would ask me about the Paris Reparation Agreements, how these things would affect--- So, it would be difficult for me to say how there could be a difference between Mr. Charles E. Wilson and Mr. Spofford because I always gathered that whatever I talked to the Trustee about would also be relayed to Mr. Spofford.

Q Conversely, much of the detail that you talked to Mr. Spofford about, you never bothered to pass along to Mr. Wilson, did you?

A I doubt if that's correct, sir. Mr. Spofford and I would work in Switzerland; for instance, at one point, we worked in 1961, from the end of February, when I was there, until March 11, and when I got back to Mr. Wilson in New York, I related the current details of what we were doing. We were working on this Memorandum.

Q You had a copy of it, then, to give him, didn't you?

A Beg pardon.

Q You had a copy of the Memorandum to give him?

A Well, I had been given a copy of the First Draft of
1155 the Memorandum, the first time I saw it, from Mr. Spofford,
in Zurich, and I had copies of the re-drafts and corrections,
et cetera, from that First Draft.

Q Actually, isn't it true that--- Well, I'll put
it this way. Did Mr. Wilson ever write a single page
of paper on this Interhandel matter while he was Trustee,
as any guide or any Memorandum to anybody?

A Would you please repeat the question.

Q I said, Did Mr. Charles Wilson ever put down on paper
and distribute to anybody related to this case a single
Memorandum about this case?

A Well, he certainly put down on paper his
Memorandum to the Department of Justice.

Q Mr. Wilson did?

A It was his Memorandum.

Q Which memorandum are you referring to when you
say "Memorandum to the Department of justice"?

A I'm referring to the memorandum of Charles E.
Wilson, Trustee, on the Interhandel controversy, which was
delivered to the Attorney General's Office sometime in
May of 1961.

Q Are you referring to Plaintiff's 105?

A Yes, I'm referring to--

1156 Q That wasn't--- I mean, this may have gone in under the aegis of Mr. Charles Wilson, but you are not suggesting that Mr. Wilson wrote 105, are you?

A I certainly do, every part of it, when it was gone over with him.

Q That isn't what I was asking you. Isn't this the document that Mr. Spofford, you and I worked on?

A It was the document which Mr. Spofford originally framed out, which I worked on and which I understand you contributed information on it to Mr. Pryor, but it was the Trustee's Memorandum.

Q Oh, I don't mind it's being called the Trustee's Memorandum. But my point is, I haven't found any evidence offered in this case of a single communication in writing by the Trustee to anybody, except to Europe.

A Well---

Q I mean to Government officials and to people in high places in Government in Washington, I don't find any communication from the Trustee, offered by the Trustee, do you?

1157

BY MR. WILSON:

Q Do you find any such papers?

A Mr. Wilson, I would have to look at the record, but off-hand, I am in no position to argue about it. I don't know. I am not privy to everything Mr. Charles Wilson did.

Q But didn't you find that Mr. Spofford, for example, was the one who was carrying on the major correspondence with Dr. Schaefer?

A Well, Mr. Spofford -- I certainly have seen in the files a number of letters by the Trustee's attorney, Mr. Spofford, to Dr. Schaefer. I have seen also letters between Mr. Spofford and Mr. Orrick, for instance, and vice-versa, so, I mean, I know from my own recollection of these things, that these documents exist.

Q Isn't it true that actually -- You may not like the word; I don't mean it derisively -- Mr. Charles Wilson was a sort of a "front" in this matter?

A No, sir, and I don't like that being said -- absolutely not!

Q Didn't there come a time when Dr. Schaefer and Mr. Spofford wrote about whether Mr. Spofford shouldn't take over the whole thing?

1158 A Well, I recall-- My best answer I can give you to that is, I recall that after I came back from Switzerland with Mr. Spofford in 1961, Mr. Spofford reported to his client, and the Trustee told me that Dr. Schaefer had tried to have Spofford subvert his client.

Q In the sense of taking over the whole thing?

A I gave you my answer. That's what I was told.

Q Using the word "subvert" doesn't help any of us. My point is, you mean that there was a discussion that Mr. Spofford should take over the whole activity?

A I can only tell you what was said to me. No, no.

Q What did you mean by saying he "tried to subvert"? Who did he try to subvert, Mr. Spofford or Mr. Wilson?

A I can only tell you what was related to me, and what was related to me was that Mr. Spofford--- The Trustee told me that Mr. Charles Spofford upon returning from Zurich in early 1961, had disclosed to him that Dr. Schaefer had tried to get Mr. Spofford to subvert his client.

Q Did you get any more definition of it than that?

A Well, shall we say that I understood it, that some offer, proposition of some kind had been made to Mr. Spofford -- Mr. Spofford, by the way, did not tell me this; he told it to his client -- that some suggestion was made that if Mr. Spofford would help get rid of the Trustee, that his client, Union Bank, would retain Davis, Polk for a period of future years.

1159 This was my understanding, of course. It's only what was told to me, of course. I don't have other knowledge.

THE CLERK: Defendant's Exhibit 51 marked for identification.

(Defendant's Ex. 51 marked.)

BY MR. WILSON:

Q I show you Defendant's Exhibit 51 for identification, which purports to be a communication between Mr. Schaefer and Mr. Spofford of May 30, 1961, and ask you whether that came to your attention about the time that it was written?

A (Reading exhibit) I recall seeing this letter approximately two weeks ago for the first time.

Q Is that so?

A Yes, sir.

Q Did you ever accompany Mr. Wilson to any conference that he had when he was acting as sort of what they call Trustee for Interhandel, except where Mr. Spofford was present?

A Oh, sure.

Q Whom did he go see with you?

A Well, I would be in conference with him, with Mr. Wilson, and Mr. Budich, and Mr. Wilson and Dr. Wehrli.

1160 Q Leave out the Interhandel group. I'm talking about officials on the other side who might have an interest, or even officials of General Aniline. Did you ever accompany Mr. Wilson to see any official of General Aniline?

A No, sir. No, sir.

Q Did you know of his doing this, other than what he told you?

A Oh, yes. I knew it from Mr. Spofford also at the time of these things.

Q Yes. But you didn't--- Did you hear it from the official of General Aniline?

A No, sir.

Q With the Government officials, officials who had something to do with the General Aniline case, did you accompany him to any meeting?

A I was not to go to Washington.

Q If you learned of any meeting, did you learn of it through Mr. Wilson?

A Most usually, yes.

Q Were you ever in his office at any time when he phoned any Government official and discussed the subject of the General Aniline case?

A Yes, sir.

Q Who were they, sir?

1161 A Well, one instance was that I was in his office when he talked to Mr. Orrick, the head of the Civil Division of the Department of Justice, in early 1962.

Q Isn't it true that when that call took place, he was complaining about the interference of Dr. Schaefer

and me, and not talking about the advancement of the General Aniline case?

A Oh, yes, he was talking about the advancement of the General Aniline case. Specifically, he was talking about--- Orrick wanted him to come down to Washington and negotiate on the percentage bases proposed by Dr. Schaefer which were about 40 million and 75 percent -- would be 40 million -- and Charlie Wilson said he would not do it.

Q And what did he say was the reason he wouldn't do it?

A He said it was a Christmas present, and he was going to hold the Government to the previous level that he had achieved.

Q Was he complaining that in the previous October Mr. Schaefer had gone to see Mr. Orrick?

A Yes.

Q --with me, and was he disgruntled over that?

A Oh, yes. He said he didn't want to see any more end-runs around his trusteeship.

1162 Q Despite that, was it he who called up Mr. Orrick or Mr. Orrick who called him up in January?

A He put in the call to Mr. Orrick.

Q It was to discuss the case, was it?

A Yes, sir.

Q In other words, he was still interested in functioning as Trustee in January of '62?

A Yes, sir.

Q What other phone call did you ever hear him make to a Government official?

A Well, not to any then-active Government official. I heard of none other than I can recall at this time.

Q When you did see this letter, Number 51, a couple of weeks ago, was this paragraph which I am about to read similar to the type of subversion that you had had reported to you by Mr. Spofford?

I read: "According to the power granted to Mr. Charles Wilson, it is mainly under his auspices that contacts with the United States Government take place. Perhaps we will later have to discuss whether it would not be advisable from a certain moment on and establish direct contacts between yourself and the company on a basis then to be fixed."
Was that the kind of subversion that you had had told to you earlier?

1163

A No, sir.

Q What was the kind of subversion that you had been told of, differently from this?

A The kind of subversion that I was told of after I returned from Switzerland in 1961 on that trip with Mr.

Spofford, was that Mr. Spofford was outright propositioned to subvert his client, to get rid of his client, and that he would be hired by the Bank independent of Mr. Wilson, the Trustee.

Q Did you discover what answer Mr. Spofford made to 51?

A You'd have to show me something.

Q Are you aware of anything?

A Off-hand, at this moment, no.

Q Now, coming back and asking you again to tell us of a single page of paper that the Trustee ever wrote to a Government official after he became Trustee upon the subject of General Aniline?

A Well, I recall once being in the Trustee's office, and I recall he showed me some letter from Vice President Nixon, which I think was in reply to some communication.

Q Wasn't that letter shown you, and didn't you interpret it in a letter which you wrote to Dr. Sturzenegger as simply being evidence of a friendship which existed between 1164 these two gentlemen, and had nothing to do with the subject of General Aniline?

A That may be.

Q Did you give Mr. Wilson memorandums discussing the past historical events, pre-Pearl Harbor historical events of I. G. Chemie?

A Yes, I gave him memoranda, and I would also come into his office when he would ask me specific questions about this sort of thing, and if there was something that I didn't know myself, I would consult my father.

Q Did you keep copies of those memoranda?

A I had memoranda, yes, on some of them. I had memoranda on the extraordinary manner of the vesting, and I took down--- No, in the case of Spofford's office, I recall---

Q I'm not talking about Spofford's office.

A --I dictated some ^{of them} in Spofford's office and got no copies. That's my point.

Q Do you today possess copies of any Memoranda which you passed to the Trustee after he became the Trustee, to educate him in this matter?

A Yes.

Q You still have them?

A I think so.

1165 Q Many?

A Well, several. I think several would be the right answer.

Q I think you said you spent days and hours with the Trustee, didn't you?

A Many days, many hours.

Q What did you talk about these days and hours?

A Well, currently, I mean--- Mr. Wilson as Trustee would either be contacting Secretary Herter, or he would tell me that he had to see Secretary Anderson, or that he had a date with Secretary Dillon, et cetera. And prior to these things, he would call me in the office and say, "Now, the topic that we will be discussing which will be interesting to the Treasury or the State Department will cover these areas. What can you tell me about the background of the Paris Reparation Agreement," or "What can you tell me about the background of this tax case?" What can you tell me about this or that?" It was current stuff, so that over a period in 1961, I was in Zurich, and Mr. Spofford asked me, to be specific, whether or not he could have one of his attorneys from his firm go to interview my father in order to get certain information from my father, and I said, "I think that can be arranged."

1166

And later, when I got back to New York, the Trustee asked me to spend all the time I could with my father in order to perpetuate his knowledge, because my father was of advanced age, to perpetuate his knowledge so the Trustee could have the drafts of what ultimately went into the affidavit of my father's, to give him an education on the background of General Aniline, for instance the Reppe high-pressure acetylene polymerization processes and also the reduction of iron Penta-carbonyl to form iron carbonyl

for the radar during the war, and matters with respect to my father's undertaking the establishment of the production of atabrine, synthetic quinine. And these would be matters which the Trustee would ask me to relate to him which would give him a better grasp of the past growth of the company, which he wanted to have evaluated by Morgan.

Q "Company" -- by that you mean General Aniline?

A General Aniline, yes.

Q And did he need that in preparation for his meeting with Secretary of State Herter?

A A Well, as I said---

Q Just answer that yes or no.

A He needed other material for Herter.

Q Did he need that for Mr. Herter?

A No, but he may have needed that---

Q Did he need that for Mr. Dillon?

A That would be up to him to know. I don't know.
It was up to his discretion, not mine.

1167 Q Did he need it for any other Cabinet officer he was seeing?

A I think so.

Q What did he tell you after he saw Mr. Herter was the result of his seeing Mr. Herter and discussing the General Aniline case?

A I don't know whether I recall that he said he saw Mr. Herter. He may have talked to him, or written him, or something.

Q What did he say after he saw Mr. Dillon as to what he discussed with him about the General Aniline case, and what Mr. Dillon said?

A He said to me, his talks with Mr. Dillon were very important because--- Well he had several. But the talk that he had with Mr. Dillon, one in particular, was connected with the orientation of the incoming Kennedy Administration, in which Cabinet Mr. Dillon also functioned.

Q That was the purpose of seeing Mr. Dillon?

A Well---

Q Where was Mr. Dillon then, in the State Department as Under-Secretary?

A What date was this?

Q You said "the incoming..."

A He transferred from Treasury to State, didn't he?

1168 Q Well, all right. Did he tell you of the conversations with the Attorney General upon the subject of General Aniline?

A Well, it was my understanding---

Q No, no. Give me an answer yes or no: Did he tell you of conversations with the Attorney General?

A He told me of conversations with a Kennedy, in Palm Beach.

Q With a Kennedy?

A I assumed it was the Attorney General to-be.
He wasn't the Attorney General yet.

Q You didn't know, did you?

A Well, I know that he went to Palm Beach, to
Ambassador Kennedy's home, on the subject of General Aniline-
Interhandel -- his duties as Trustee on Interhandel.

Q You don't know whether Robert Kennedy was there
at all, do you?

A It was my impression at the time----

Q No, no, no. Did you know it, sir?

A I--- I---

Q No, no, did you know it, sir?

A Did I know it at that moment?

Q Did you know it then, yes?

A I thought I knew it.

1169

MR. WILSON: No, no. I move to strike that.

BY MR. WILSON:

Q Did you know it , or not?

A Now I would say I did not know it.

Q Were you later told by Mr. Wilson that he saw
Mr. Robert Kennedy at the elder Kennedy's home in Palm Beach
on that trip?

A He told me he saw a Kennedy with respect to the
new Attorney Generalship.

* * *

1170

MR. WILSON: Let me read the sentence. I don't mean to dwell on this because I was discouraged the other day from dwelling on my own personality in this lawsuit, but I'm only doing that to move to another point.

MR. O'DONOGHUE: I object to that, your Honor, and move that it be stricken.

* * *

MR. WILSON: I should like to make one constructive and objective comment.

THE REPORTER: Is this quoted?

MR. WILSON: It is, yes, ma'am. Shall I read it back, Mrs. Taylor?

"I should like to make one constructive and objective comment. I respect John Wilson and consider myself a friend of his. He is without peer in the litigation procedures and arguments. However, I am convinced that he could know, and should know much more than he appears to know of the business affairs of Interhandle-I.C.-GAP, and of the people involved 1938 to 1942 than he does. He seems to know too little prior to 1945."

1171

Do you remember that from your letter?

A Yes, John -- Mr. Wilson.

Q Would you say that if you were writing this letter today, you would say the same thing?

A Yes, sir.

Q What would you say about yourself in regard to the same period?

MR. O'DONOGHUE: I object to the question?

THE COURT: I will sustain the objection.

THE CLERK: Defendant's Exhibit 52 marked for identification.

(Defendant's Ex. No. 52 marked.)

BY MR. WILSON:

Q Mr. Schmitz, I show you what I have marked Defendant's Exhibit No. 52 for identification, and ask you if you can identify that as the last page, which is missing, from 61?

A (Examining) I don't think I--- How can I? Was this introduced into evidence before?

Q I am now introducing it, but I want to give you your longhand copy of it in a second.

A Well, please do.

MR. O'DONOGHUE: May I say, your Honor, if all of 61 was not introduced by us, it is only because the whole thing was not furnished to us by the Defendant.

1172

THE COURT: The Court understands that.

THE CLERK: Defendant's Exhibit 53 marked for identification.

(Defendant's Ex. 53 marked.)

BY MR. WILSON:

Q I now show you 53, which obviously is in your handwriting, and ask you whether that encompasses Plaintiff's Exhibit 61 and Defendant's 52?

A (Checking documents) Yes, sir. This, Defendant's Exhibit 52, will be the completion, the continuation of Plaintiff's Exhibit Number 61.

Q Thank you, sir.

A Would you like me to read it?

Q No, I don't want you to read the whole thing. I want you to look at parts of it, if you please, sir.

Under the title of -- on page 3, under Arabic numeral 2, you have a title as to "Spofford: And his work," haven't you? Do you find that title?

A Yes, sir.

Q Do you find a paragraph which follows the first paragraph beginning with, "Of course, upon returning from Paris..."

A Yes, sir.

1173 Q Now, just prior to that, in the sentence which comes in prior to that, you say:

"This is all permitted eliminating the non-essentials and focusing on those essentials which, as part of various talks to occur with, say, the Senators of a given committee or with Rogers, may

help best in drawing up the best Stipulations of Settlement, and best equip Spofford in any detailed talks with John Wilson which now have occurred and will continue, of course."

Did you envisage by that, Mr. Schmitz, that you would give Mr. Spofford some information upon the subject, and that I would fill it in with details?

A Well, this speaks for itself, doesn't it?

Q What did you mean by "detailed talks with John Wilson"?

A I knew the precise mental habits of Mr. Spofford, and I knew you for many years, and it would seem obvious to me that any talks you would have would not be superficial, they would be detailed.

Q And would it envisage that I would go into more detail than you would have with what you gave Mr. Spofford?

MR. O'DONOGHUE: I object to that as being---

THE COURT: I will overrule the objection. He may answer.

1174

THE WITNESS: I would have hoped that you and Mr. Spofford would be best able to go into the utmost detail you wished to go into.

BY MR. WILSON:

Q Thank you. Now, the next sentence said:

"Spofford had to be told by me of Donovan &

Leisure's consultative retainer in the past with John's case, as a new counsel for the Trustee."

A Yes, sir.

Q Did you mean to suggest by that sentence that you were the first to tell Mr. Spofford that General Donovan's law firm in New York was associated with me in the Interhandel case?

A I recall having mentioned this to Mr. Spofford at Paris. I had no--- We were ready to go back, and he was talking about seeing Byron Raymond White, and I mentioned to him the fact that General Donovan's firm had been before the Congressional Committees, and had been under some consultative basis with you in this effort.

Q Well, did you mean, by that sentence, to imply that you were obliged to be the one to tell him that, as contrasted with me?

A Well, Dr. Schaefer, in Paris, expressly asked me to tell Mr. Spofford everything I could which would help---

1175

Q That doesn't answer my question. Does this sentence in the letter to Dr. Wehrli imply that you were obliged to tell him that because I didn't?

A Well, you still hadn't even met him.

Q What did Mr. Byron Raymond White -- I didn't know what his middle initial was -- What did Mr. Byron Raymond White have to do with this case in Paris in 1960?

A Well, he had nothing to do with it in Paris.

Q Where was he in this picture in 1960?

A I never fully knew myself. All I know is that Mr. Spofford, in Paris, said that upon--- We were in a campaign year already, and Mr. Spofford stated in Paris that evening to Mr. Wilson and I, that one of the persons he would be consulting with in the United States would be Mr. Byron Raymond White. I gather he was President Kennedy, Nominee Kennedy's campaign head at the time.

Q He was what?

A I think he ran President Kennedy's campaign before he became President. I think he was his campaign "key man," whatever you want to call him.

Q I see. Look at the last paragraph of your letter, will you please, sir?

A Yes.

Q Would you read it aloud?

1176

A Yes. "Other than this, the Trustee is most satisfied with the present relationship with John, and I do not wish to be negatively critical, only to point up weaknesses and bad judgment which endangers, and over the years, may have negated much of the costly work of

Interhandle and stockholders. Enough has been said, and it should be forgotten, but no longer allowed to be misinterpreted or contemplated superficially because

it is the impressions which work negatively more than facts or words.

"Having said what I have, please forget it, as there is much to do. Nothing is perfect, and relations are very good, and must so remain.

"Most sincerely,

Robert A. Schmitz."

Q Now, interestingly enough, one year before that to the day, you wrote Dr. Sturzenegger, as per Defendant's Exhibit 5, didn't you, sir? June 10, 1959.

A Yes, I--- This is Defendant's Exhibit 5, a letter of mine of June 10, 1959.

Q By that time, Mr. Charles Wilson had said that if he were Trustee, he would have Mr. Spofford as his personal counsel, didn't he?

A Yes, sir.

Q And he said so in that letter?

1177

A Yes, sir.

Q And in that same letter, you said that you were supporting the idea of having Spofford brought in earlier as supplementary counsel to me, didn't you?

A Where does that say here? Where is that?

Q I will show it to you: On page 2, where I marked it with a check-mark. Read it aloud, sir.

A Well, the answer would be negative as far as your question is concerned because it says:

"Whether or not, if or when Mr. C. E. Wilson will or can be enabled to intercede and settle this matter in the best interests of Interhandle, the United States and Switzerland, it remains that Mr. Wilson believes that Interhandel should, by all means, seriously consider his recommendation to retain Mr. Spofford as a supplementary counsel as soon as possible."

It says "Mr. Wilson believes this."

MR. WILSON: I offer in evidence, if the Court please, Defendant's Exhibit for identification 52, which is the last page of Plaintiff's Number 61, and the handwritten copy, which is a composite of Plaintiff's 61, and Defendant's 52, which is marked 53.

THE COURT: You have no objection?

MR. O'DONOGHUE: Of course, I have never seen the end of that letter. Maybe it would be well if I would now.

1178

THE COURT: Do you want to look at it?

MR. WILSON: Why don't you take the whole thing?

MR. O'DONOGHUE: (Reading document) No, I have no objection, and would be happy to have Defendant's 52 attached to the end of Plaintiff's 61.

THE COURT: --so they can be read together.

MR. O'DONOGHUE: Yes.

* * *

THE COURT: And there being no objection, they will be received in evidence.

1179

BY MR. WILSON:

Q Did you testify on Direct Examination, Mr. Schmitz, that Dr. Schaefer went to see the Attorney General in October of 1961, with no fore-knowledge that he intended to do so by Mr. Spofford or Mr. Wilson?

A I didn't testify to that. I said what he did in the Attorney General's Office was without the knowledge and consent of the Trustee. We knew he was planning to come, but we were trying very hard to stop him.

Q On page 373 of the record in this Court, you were asked by Mr. O'Donoghue the following question and you made the following answer:

"Q Would you tell what occurred at that meeting with the Trustee?"

(This is the meeting at the Links Club, after Mr. Schaefer had seen the Attorney General.)

"A Yes. This was on or about October 30th, 1961, in New York City. The Trustee called me to his office and said it was urgent. I went over, and the Trustee stated to me that he had never been so exercised in his life, that he had just come from a meeting with Mr. Spofford and Dr. Schaefer at the Links Club; and that Mr. Spofford" -- and this is it -- "that Mr. Spofford

and he had been informed by Dr. Schaefer had, without
1180 "their knowledge and consent, gone into the Department
of Justice and gone into the Attorney General's Office,
and there had made an offer to the Government without
his knowledge and consent, which he said was a Christmas
present to the Government."

Did you mean to say, sir, Mr. Schaefer went to
the Department without their knowledge and consent, or that
he made an offer without their knowledge and consent?

A What I mean is that he went in to the Department
without their consent, that he came over to the United
States with the knowledge that he was coming, but he went
in to the Department of Justice without the Trustee's
consent, and he made an offer, and did business behind the
Trustee's back without the Trustee's consent.

Q Why did you use the phrase conjunctively, "without
their knowledge and consent," when you testified to his
Honor the other day?

A I still testify the same way. You have to read
the whole sentence.

Q You agree, though, Mr. Spofford knew he was going?

A Why sure, but we were desperate trying to stop him.

Q This answer should not be considered that he went
there surreptitiously, without Mr. Spofford's knowledge?

A Oh, I think it was surreptitious. We found out about
it.

1181 Q Well--- You mean, it was found out about after it occurred?

A No. We found out about it before it occurred.

Q Did you not know that Mr. Spofford had been communicated to by Mr. Orrick and told of the engagement, and that he had communicated this to Mr. Schaefer?

A That's my understanding.

Q --in advance of Mr. Schaefer coming over here?

A We knew it. We didn't want him to go.

Q What's surreptitious about that?

A I think it was surreptitious making the offer without the Trustee's consent.

Q I see. But not going in to the Attorney General's

A That was also without his consent.

Q Was that surreptitious?

A I think so.

Q This sentence I want to read to you from page 357 of the record. Frankly, I don't understand it.

Mr. O'Donoghue had asked you this question:

"Q Thank you. During the period of the late Spring and the Summer of 1961, what did you do in relation to the Interhandel matter?

"A I was continuing to work as directed by the Trustee to prepare the material background from sources,

1182

"from my father. I was going through many documents, interviewing my father, helping him on the drafts of his affidavit.

"The Trustee asked me to write up Memoranda for Mr. Spofford on the exceptional matters of the vesting, get matters out respecting the hearings before the Senate Judiciary Committee, testimony adduced before the Committee on the conspiracies which were allegedly undermining the United States Government during World War II, numerous things of that sort -- a great variety of work I would be asked by the Trustee as the occasion demanded in order to be asked questions by him that he needed answering."

I read to the end of the sentence, although I didn't need to. I did not read to the end of the answer, but I think there is nothing there that affects what I am going to ask you.

I'm interested in knowing what you refer to when you say "testimony adduced before the Committee on the conspiracies which were allegedly undermining the United States Government during World War II."

A Yes. Well, that you can find, if you want to introduce it, in the Final Report text which is that (indicating thick of the Senate Judiciary Committee on the administration

1183 of the Trading With the Enemy Act, as amended, the so-called Johnston Committee; and the Final Report of that Committee is a document which I made available to the Trustee, and during that, in that Final Report are included the testimony adduced before the Committee as to the activities of Harry Dexter White, Frank Coe, Elizabeth Bentley, Leon Uhlman who were testified to as alleged Communist cells in the United States Treasury, operating during World War II.

Q The reference in here is to Communist conspiracies, is that right, sir?

A Well,---

Q I mean, you're not suggesting any conspiracies amongst the Swiss?

A Oh, God, no. Pardon me for using that---

Q Well, what do you mean here? Did you mean the Dexter White type of Communist conspiracy?

A Yes, which almost made it tougher for you to get a license to talk to your clients after the war.

Q That is not so.

A Well, the record of the Final Report speaks for itself.

Q It doesn't mention me in it, does it?

A Well, it mentioned lawyers, per se, that they didn't want to have anybody even be able to file suit.

1184

Q This document that you transmitted to Mr. Saager with your Number 46, you have got a sub-title here, "Communist Conspiracy and Confiscation."

A Yes.

Q (Continuing to quote): "Objectives and methods of Economic Warfare against the United States through diversion of Administrative Authority."

A Yes.

Q Is that relating to the same subject?

A Yes, Mr. Wilson, it is.

Q And then under 109, you have a chapter on that, is that it, Plaintiff's 109? 109 was a communication to Mr. Wilson to which you attached a copy of your writing, and you identified that as being the document which you sent to Mr. Saager.

A Yes, sir.

Q Is there a chapter in the attachment to Plaintiff's 109 which bears this title?

A I will see. (Examining document) This is entitled 3, page 2: "The Communist Conspiracy and Confiscation. Objectives and methods of Economic Warfare against the United States, through division of Administrative Authority."

Q "Division" or "diversion?"

1185

A It's "division" here, my eyes tell me.

Q All right. Well, whatever you meant. The text in 46 says "diversion."

A Yes, well---

Q That answers my question. That's the same title. Did you cause this to be published in any place?

A No, sir.

Q On page 370 of the transcript, you have a rather long answer -- I don't believe I am unfair if I don't read all of it. The question was -- it was by Mr. O'Donoghue:

"Q Now, you say the Trustee called you into his office and told you about it. What did he tell you?

"A The Trustee called me into his office and said, 'Bob, I want to tell you that the forces of spoils are hard at work.'

"I asked what he meant by that. He said, 'Well, he had been informed that the Department of Justice had complained to Mr. Spofford about interferences in the conclusory negotiations, and that he heard that a lawyer was going over to Switzerland,' -- I'm going to finish the sentence, although I don't need it for my purpose: "that he heard a lawyer was going over to Switzerland, and that Schaefer had intended to make some move to see the Attorney General without his knowledge or consent."

1186

I come back to your use of the phrase, "in the conclusory negotiations,"---

A Yes, sir.

Q --what did you mean by that phrase?

A By that phrase I meant that the Trustee and his attorney, Mr. Spofford, with Mr. Orrick, had arrived at the pre-conditions on which the final dollar figures, everything would be--- In other words, the pre-conditions to the settlement by the Trustee and his attorney with Mr. Orrick were being worked out in accordance with the arrangements made by the Trustee right at the time the Kennedy Administration came in, and that they were in a conclusory phase.

Q And did you envisage in that phrase that the percentage had been agreed upon?

A No, sir, because it was not to be a percentage. The Trustee was getting a full return. It was going to be a dollar figure to the Government for its custodial services, and---

Q Well,---

A --and Mr. Spofford had not yet--- By Mr. Spofford and the Trustee's own agreement and desire, they desired to keep the question of the final dollar figure to the Government a matter for the final doings after all the pre-conditions had been worked out.

Q And did this envisage in your mind that there had

1187 been a firm offer by the Government?

A It was in my mind that it was understood by the Trustee, and he stated to me in 1961, the Trustee stated to me -- and I relayed this to Interhandel in Switzerland -- that a full return could be definitely anticipated.

Q Did he say whether that had been made in the form of an offer?

A No, I gathered--- At the time, I was under the impression Governments made offers; but I only can tell you what Mr. Wilson, the Trustee, told me and what Mr. Spofford told me was that a full return based upon hard-line approach, demanding a full return would succeed, and could be definitely anticipated, and I relayed this to Saaxer, and Brupbacher and to Mr. Schaefer, in Zurich.

Q Did you learn from either of these gentlemen, Mr. Spofford or Mr. Wilson, that a point was reached where that thought had to be abandoned?

A No, sir. No.

Q Not even in the earlier period of Mr. Wilson's trusteeship?

A It didn't have to be abandoned at all.

Q How do you reconcile that with the offer that you say Mr. Townsend made of 75 percent in December of 1960?

A I didn't say Mr. Townsend made the offer. I said Mr. Townsend begged the Trustee to make him the offer.

1188

Q --of 75 percent.

A --providing 75 percent was \$40 million.

THE COURT: You don't mean that.

THE WITNESS: Providing the 25 percent was \$40 million, yes.

BY MR. WILSON:

Q Did this envisage full return?

A That didn't, but therefore, we had the series of meetings with Dr. Wehrli in New York and decided that we should best continue under the Kennedy Administration for full return, because we decided that that would be best, and that we could achieve it.

Q And the full return progress was such, that Schaefer and I interrupted, is that it?

A I don't know what you did, Mr. Wilson.

Q Did Schaefer interrupt it in the conclusory stages of the full return?

A Yes, he interrupted it.

Q Thank you, sir. Were you here when Mr. Orrick testified?

A Yes, sir.

Q Did you hear Mr. Orrick say anything about envisaging a full return to the Swiss?

A I would have to recall his testimony. I remember

1189 he said he didn't make any offer. I would have to look at the record, in fairness to everybody, to see what he said.

Q Did you hear Mr. Orrick, either under Direct or Cross-Examination, ever use the words "full return" at all?

A No, I didn't hear him use those words.

MR. WILSON: I have no further Cross-examination of this witness.

* * *

FOR THE DISTRICT OF COLUMBIA.

ROBERT A. SCHMITZ,

Plaintiff,

vs.

SOCIETE INTERNATIONALE.

Defendant.

CIVIL ACTION 85-67

Washington, D. C.

Friday, January 23, 1970

VOLUME X

(Pages 1195 - ¹²⁷⁶~~2070~~)

Plaintiff's
Copy

MARIE S. TAYLOR
Court Reporter
805 Grand View Drive
Alexandria, Virginia

3005

* * *

CHARLES E. WILSON

called on behalf of Plaintiff, having been previously sworn, was examined, and testified further as follows:

MR. WILSON: Mr. Wilson, will you resume the stand?

CROSS-EXAMINATION (Continued)

BY MR. WILSON:

Q Mr. Wilson, would you say that it was a fair description of your business relationships with Mr. Robert Schmitt that you "worked as a team," and those words I put in quotation marks, from about 1953 to 1959?

A No.

MR. WILSON: Mrs. Bassett, will you give this a number. I only want to identify it now because I don't make an offer of it at this time.

DEPUTY CLERK: Defendant's Exhibit Number 54 marked for identification.

MR. WILSON: I think that should be stapled because the bottom piece is handwritten.

* * *

BY MR. WILSON:

Q Mr. Wilson, on April 23, 1959, is disclosed by Defendant's Exhibit 54---

MR. WILSON: And by the way, your Honor, this document is admissible under a stipulation anyway, so I am

not doing anything improper in referring to it, although it is not in evidence yet.

BY MR. WILSON:

Q (Continuing) Mr. Schmitz did say, in writing, to Dr. Sturzenegger,

"For some six years, Mr. Wilson and I have been friends, and have functioned as a team, so to speak.

2007

"Although I have and want no mandate from either you nor Interhandel, it remains that until such time as the contemplated plan and settlement work can be put into effect, I must think of the best interests of the situation and of Interhandel and not of the interests of a buyer or interested American Industrial Entity, so to speak."

I read the whole paragraph just so it could not be said that I picked this out of context. That's where I got the phrase, "functioned as a team." Do you still say that you would not give that relationship such a description?

A Well, "a team" may mean something to one man and quite different to another. During the period -- maybe this is what Mr. Schmitz would call a team -- I tried to help Mr. Schmitz in his operations to get, sell TAP to a number of people, and that may have been regarded as team work. It was team work, I suppose, in the efforts when I would try to help, but that's the extent of it.

Q Would this be a fair description of your business relationship with Mr. Schmitz vis-a-vis Interhandel-General Aniline, namely, that the first era involved the interest of Grace in the acquisition of General Aniline. At that time, you were on the potential purchaser's side of the fence, were you not, sir?

A That's right.

Q003 Q And you were working with Bob Schmitz who was equally on the side of the potential purchaser, at that time?

A I regarded, from what he told me, Mr. Schmitz as having, wearing two hats in the thing. He was working in the interest of Interhandel and trying to sell the properties involved in GAF to a prospective buyer.

Q Well, I don't want to use the ugly phrase of "conflict of interest." I'm not getting into that. But the point is, getting into what I call the "Grace era," Bob Schmitz was in the employ of Grace, wasn't he?

A He was for a short time period. I don't remember exactly.

Q Would you agree that it was as much as three years?

A I don't think it was three years, but I'm not sure. I'm not sure of the exact time.

Q And at that time, you had no doubt about his loyalty in seeking to have his principal, i.e. Grace,

make a wise acquisition, isn't that so, sir?

A No, I don't--- As I say, in my conversations with him at that time, I regarded him as wearing two hats.. In other words, he talked much about his interest in Interhandel as well as trying to dispose of the company, of GAP.

Q Now, your loyalty was a hundred percent to Grace?

2009

A While I was with the Grace Company, it would be a hundred percent.

Q No doubt about it, and I don't want you to think I'm insinuating anything to the contrary.

A I don't care about your insinuations.

Q Thank you, sir. The point is, did you think you were getting that loyalty out of Schmitz during that period of time, the same loyalty that you were giving to Grace?

A I said, I think twice before, that I thought Mr. Schmitz was wearing two hats.

Q Would you answer my question: Were you getting---

A That's my answer to it.

Q No, no. I won't accept that answer. I want to ask you, do you think that you were getting the same loyalty out of Schmitz that you were giving to Grace and the Interhandel?

A I never thought about it.

Q I see. Now, then, there came a second period

period of time when you ceased to be with Grace, and you had no interest except to help Bob Schmitz get employment from various American industrial outfits, isn't that true, sir?

A No.

Q You say that's not true?

A Not true.

2010

Q All right.

A Let me explain that. You say, "not employment."

There never was a time when I was helping him to attain employment that he was allegedly seeking. The only time--- The period you're talking about, evidently talking about, was when I did introduce him to certain officers of companies that he thought, and I agreed, might be interested in the acquisition of GAF.

Q You did know, sir, did you not, that he was seeking pecuniary engagements in all those transactions?

A No.

Q What about the National Lead incident?

A I don't know. I don't know what kind of an arrangement he was making with them.

Q What about Frank Pace, with General Dynamics?

A He would seek, obtain a finder's fee if he was able to sell them the job.

Q Then, you do know that he was seeking to get a position of engagement or employment in those instances?

A No, not employment -- not employment.

Q You don't think a finder's fee is employment?

A Well, I never regarded it so.

Q I see. You do say, though, that what he was trying to engage himself in was to assist companies to buy General Aniline from the Swiss, isn't that so, sir?

2011 A That's right.

Q And he wasn't doing it for nothing, was he?

A He didn't get anything out of it at the time. He was, I surmise, looking forward to a fee if he was able to cement the deal.

Q Did you not know contemporaneously that he was having or seeking contractual relationships, for instance, with Joe Martino, of National Lead?

A I don't know anything about the Martino---

Q You've never heard discussed in your presence a \$40,000 prospect of a fee?

A No.

Q I see. You're not, though, saying, are you, and not meaning to leave the impression with the Court, are you Mr. Wilson, that Bob Schmitz was doing these things altruistically /and not with a pecuniary motive on his own part?

A I am not making any comment either way about it.

Q I see. Did I understand you earlier to say, when I was questioning you before, that you had no contact with

Charles Percy or Bell & Howell with respect to the General Aniline picture?

A Bell & Howell, Charles Percy of General---

Q --of Bell & Howell, with respect to General Aniline?

A I don't remember discussing it with him.

2012

Q Do you remember when you were with Grace, that Percy came to you folks with regard to some kind of a transaction whereby Inco, the photographic end of General Aniline, would be spun off to Bell & Howell?

A I don't remember. I think I would remember if it took place because Mr. Percy is one of my friends; but I don't remember that at all. It may well have been, but I don't remember.

Q Did you know Mr. Mayer of Lazard Freres?

A No.

DEPUTY CLERK: Defendant's Exhibit Number 55 marked for identification.

* * *

BY MR. WILSON:

Q Mr. Wilson, in another communication of Mr. Schnitz to Dr. Sturzenegger, under date of May 29, 1967, which is Defendant's Exhibit 55 for identification, on page 4 of this handwritten letter is the following: -- And I'm trying to find a good place to start.

Do you know Mr. Murson, who was the Chairman of the Board of Air Reduction?

A Mr. who?

Q Munson, M-u-n-s-o-n.

A You mean Mr. Munson?

2013

Q Thank you. I don't know the gentleman. Is that his name?

A Yes, I know Carl Munson.

Q Did you speak to Mr. Munson with Mr. Schmitz or in his interest with respect to General Aniline?

A I don't remember it.

Q Let me read you -- and I've got to read you more than I need to read you, but to find out who the "he" is here.

"To cite a typical instance, Mr. Munson, Chairman of the Board of Air Reduction, whom I know, was interested but has always lacked direction and perspective. He said before Christmas last that he wanted me to help him, and come with his firm. He was worried about many things such as the money, -- what would really be purchased of value? etc. A very fine gentleman, but of no decisive consequence here. Mr. Munson was advised sensibly by people I know, as well as by myself. Mr. Hill, the president, was intent on getting only what he wanted for the least risk and work, and for, of course, the least money. He has been intent of allying himself in syndicates, in order to

2014

break up G.A.P., and keep for himself only the Acetvlene business. He tried forcefully to get me to meet and talk out plans with Mr. Rene Mayer, of French's Place, with his family connections in Lizard Peron. This I flatly refused to do. I would not be used, compromised, and the---

MR. O'DONOGHUE: "Yes"

MR. WILSON: Wait a minute.

* * *

Let me get that again, Mr. O'Donoghue.

(Continuing quote): "I would not be used, compromised and be of any aid to groups out to speculate and bid on these assets from the Government."

Now, that's the beginning of the paragraph, and this is the sentence:

"When I was with Grace actively, Mr. Percy of Bell & Howell came to us, hoping to get a chance to buy into Ansco. This was an opportunity and promise we could not give him. Otherwise, Bell & Howell would have very little chance alone." And he goes on again to talk about Mr. Rene Mayer.

Does that refresh your recollection as to whether you saw Mr. Percy when you were with Grace, in connection with the possibility that if Grace acquired General Aniline, that Ansco would be spun off to Bell & Howell?

2015

A I don't know.

Q Sir?

A I don't know, because Mr. Schnitz, when he was working with the people at Grace, he worked with Mr. Peter Grace and so on. They may well have had some sort of a deal with Charley Percy. I don't know. I don't recall it.

Q Now that we've gone through this discussion, Mr. Wilson, is it still your testimony that you don't recall ever talking to Charles Percy about Bell & Howell acquiring a piece of General Aniline?

A I cannot recall. I have had many conversations with Charley Percy, but I don't remember this particular thing.

Q Did you ever have a conversation with Charley Percy about General Aniline?

A I don't recall it.

Q In your direct examination by Mr. O'Donoghue, on page 895 and 896, the following occurred -- and I am only starting on 895 in order to make sense in that which follows:

"Q Was there any discussion of any kind about any compensation to Robert Schnitz?

"A The only thing that I can remember was with Dr. Schaefer and that was immediately after--- Maybe it

2016

"It was before they adjourned, but they were all around in different places discussing what, I can't remember, but Dr. Schrofer made very complimentary remarks to Mr. Schultz and so on, and told him that he would be well taken care of. I don't recall."

"Q Did you understand that to be for services that he had performed?"

I objected to it and the Court overruled my objection.

MR. O'DONOGHUE: Your objection was sustained, so it says.

MR. WILSON: Yes, it is. I wasn't used to that so I thought it was the other way.

Mr. O'Donoghue rephrased the question:

"Q Did he say that was for services that had been performed or would be performed in the future?"

You answered: "No, for the job you have done."

Then, going on, the question was asked, "Did you return to the United States?" so that was the end of that sequence of questions.

BY MR. WILSON:

Q Do you recall testifying that way?

A Yes.

Q Do you recall that that's the way it occurred?

2017

A Yes.

Q And it's in the past tense, Mr. Wilson, "for the job you have done"?

A That's right.

Q Now, in Paris in April of 1960, what was your conception of the job which had been done by Mr. Schmitz?

A Well, in the first place, he had put together this, sold them the idea of appointing a trustee, and had made up this catalog of his duties and authority and responsibility, and all that. And---

Q You mean in the future? Now, you hadn't accepted the trusteeship in Paris, had you?

* * *

THE WITNESS: I hadn't accepted it at the time, no. I said I would take it under consideration. I think that's the meeting at which, or maybe it wasn't the meeting -- I think it was at the meeting when they disclosed the text of the trustee's authority and responsibility, and so on.

BY MR. WILSON:

2018

Q Except for one day in which you may have had more than one meeting, was there any other day that you met Mr. Schaefer in Paris in April, when you were over there to discuss this trusteeship?

A I don't recall that there was another day.

Q And you had testified, as this record will show, that this conversation took place after everybody had gotten

up and was walking around the rooms, and that's when Dr. Schaefer put his arm around Mr. Schmitz and said these things. Now, at that point, you had not accepted, had you?

A No. I had promised that I would give it consideration, and so on.

Q I interrupted you, as I regret -- and I apologize -- at a point when I think you were speaking in the future tense as to what Mr. Schmitz was doing. You said he had convinced them of the need for the trusteeship, but they didn't have any trustee yet, did they?

A No, but they thought they were going to get him.

Q And did you indicate in Paris that you would take this trusteeship?

A I thought I would, but that I would take it under consideration. I wanted to talk to my lawyer and so on.

Q Mr. Wilson, I didn't ask you what you thought. Did you indicate to Dr. Schaefer in Paris that you would take this trusteeship?

2019 A I indicated that I thought I would.

Q But you would go back to the United States and see?

A That's right.

Q And you protected yourself against a fait accompli by saying you would have to find out first; is that right, sir?

A I guess that's the way it would be interpreted.

Q I ask you again, in the last of April of 1960, what was the job that Bob Schmitz had done at that time?

A April 1960? This was the---

Q Paris meeting.

A At the time of the Paris meeting?

Q Yes, sir.

A I don't know the full depth of the job he had done. He had been working with a number of outfits to try to find a buyer up to that time, a buyer for G.I.F., and when this thing was not successful, apparently he had hit on this idea of having a trustee who would try to put it over.

Q You're not suggesting, are you, that Mr. Schmitz's efforts to get a buyer, where he was representing the buyer, is something for which Dr. Schaefer was offering to compensate him?

A This day in April?

Q Yes.

A Nothing to do with that.

2020

Q Then, what had Mr. Schmitz done---

A I don't know. Ask him.

Q --for what you said, that Dr. Schaefer said, for the job "you have done"? And I ask you---

A Ask Dr. Schaefer. I don't know. I'm telling you what Dr. Schaefer said. I'm not trying to be the interpreter of what Schaefer meant.

Q All right. Then, I ask you directly from your own knowledge, what had Bob Schnitz done up to this point?

A I just tried to tell you that he had been working on the sale, trying to carry out the desires of Interhandel and find a buyer, among other things.

Q But you agreed with me that that was not something for which Interhandel would compensate Mr. Schnitz because he was acting for third parties.

A He wasn't acting for third parties. He was acting for Interhandel in trying to find a buyer for them, for their benefit. I don't get your point.

Q Is it your understanding that when he was trying to make an arrangement with Martino, of National Lead---

A I don't know anything about Martino. Don't keep bringing up Martino because I don't know anything about that deal.

Q I'll finish my question, Mr. Wilson: Is it your understanding that when he was trying to make an arrangement with Martino that he was acting in Interhandel's interest and not in Martino's interest?

A No. I think he was acting in Interhandel's interest.

Q And not Martino's?

A Right. That would be my guess.

Q Would it have been proper for him to take a

\$40,000 payment from Martino for doing this?

A I don't know anything about the deal, that part of the deal.

Q What else had Bob Schmitz done that made the job up to that point compensable?

A Ask him. Listen, I wasn't Bob's keeper. I don't know anything about all the deals that Bob had with Interhandel. I don't know why you ask me about it.

Q I'm asking you what you know that Bob Schmitz had done besides interesting third parties in the acquisition of General Aniline that Mr. Schaefer would have said, "That's a job well done." What facts do you know?

A Well, I've told you the facts that I know.

Q You don't have any other to offer?

A I don't intend to offer anything else.

Q No, no. I could not let the answer drop that way, because you have not that choice. My point is: Do you have
2022 any other facts that you want to offer?

A You mean on the history of Bob Schmitz' efforts for the interests of Interhandel?

Q --for which Mr. Schaefer would be responsible.

A Well, I guess he was responsible for anything that Bob did in the interest of Interhandel.

Q For instance, what did he do?

A Well, specifically, I think Schaefer's remark:

that day was, whatever he had in mind he did, he was very complimentary to Bob about it; and part of it, at least, was the fact that Bob had prepared this trusteeship idea, and so on, and had done all the work of preparing the description of the duties and so on. That may not have been specifically, but I think that was what Schaefer was talking about principally.

Q Now, as I understand it, in Paris, you did not overhear any conversation between Dr. Schaefer and Mr. Schmitz which descended to the specifics of compensation, did you?

A No.

Q And did Mr. Schmitz ever tell you later on what his arrangement was with Dr. Schaefer?

A Oh, later on, yes, he told me later on.

Q And what did he tell you, sir?

2023 A That it was--- I think he said he was to get about 5 percent if the thing was settled.

Q For doing what?

A I don't know. I didn't go into all the descriptions. If Schaefer made that kind of a deal, it was up to Schaefer to say---

Q No. I'm asking you what Bob Schmitz told you about this.

A I told you the extent of what he told me.

Q Let me probe you a little further.

A To ahead.

Q Did he tell you that that 5 percent was earned at the moment you accepted the trusteeship?

A I think he thought it was earned, but I don't know just---

Q What did he say to you that---

A I don't remember

Q Well, did he say to you---

A I just told you what he said to me.

Q Did he say to you that Dr. Schaefer had promised him 5 percent of the avails of a settlement, which he would have earned the moment you accepted the trusteeship?

A No, I didn't say that.

Q And he didn't say that to you either, did he?

A He did not.

Q Do you remember having any phone calls with Dr. Ulrich Mohrli at any time?

A Phone calls, oh, yes, I think Dr. Mohrli called me up. I don't remember. I think at the time that I asked Mr. Schmitz to communicate with Dr. Schaefer, Dr. Schaefer, and I hoped that Dr. Schaefer would come over here when I had an offer. I think then Dr. Mohrli came over instead, and I think he called me up, and I made an arrangement to meet with him in my office.

Q Mr. Wilson, do you recall that in April of 1962, you sought to reach Mr. Sawyer on the telephone, and you couldn't reach him, but you talked to Dr. Ulrich Mehrl?

A No, I don't remember.

Q Do you remember the following conversation taking place, in substance, between you and Dr. Ulrich Mehrl?

"Mr. Wilson reports that Mr. Robert Schmitz contacted him after his return from Europe, and he, Mr. Wilson, likes to call our attention to the obviously not very happy situation which came into existence concerning Mr. Robert Schmitz. Mr. Schmitz is upset because of the unfair treatment he got from Interhandel and Union Bank. Furthermore, the discussion showed that Mr. Schmitz intends to go to the Justice Department in connection with the affidavit made by his father. Mr. Charles Wilson is of the opinion that such a move of Mr. Schmitz would not be very happy, and could easily be the origin of confusion. Therefore, he would like to call this to our attention, and ^{to} recommend us to undertake the necessary steps to avoid such a visit of Mr. Schmitz to the Justice Department.

"Mr. Schmitz contacted him, Mr. Wilson, with the request to help him in this situation, and he also wished to get further payments out of the funds

which are still in his hands, which, what Mr. Wilson categorically refused. Just for that, Mr. Wilson is convinced that Mr. Schmitz is not, in principle, antagonistic against Interhandel and Union Bank and is quite ready to help, but that he is in a very unstable mental condition. Obviously, the financial situation of Mr. Schmitz is not favorable, and therefore, he might need the continuation of the compensation. Mr. Wilson heard of an amount of \$100,000 claimed by Mr. Schmitz. He said, of course, that such an amount would be out of proportion, but Mr. Charles Wilson urgently recommends to do the necessary to satisfy, in one way or another, "Mr. Schmitz."

2026

Did that conversation take place, in substance?

A I don't remember any part of it.

* * *

BY MR. WILSON:

Q Mr. Wilson, did Mr. Schmitz seek to get some compensation from your expense account?

A At one stage of the proceedings, he told me that Dr. Schaefer, whoever it was, sent him whatever stipend he got from them for the work he was doing, had failed to send it at this time, and I called Dr. Schaefer and asked him if he wanted ^{\$?} to give Mr. Schmitz from the fund that had been given to me, which I had not used -- I mean the fund that was put in the bank for the trustee's use if he

2081 needed it, and I said the fund was substantially still there in the bank, and could I pay him off?

He said, "No. Mr. Schmitz is our man," and "Leave that to us," something to that---

Q Do you ever remember saying to Dr. Schaefer or to Dr. Schmitz, "Pay this man Schmitz something to get him off of my back?"

A I don't remember, no.

Q Do you deny you said it?

A Yes.

Q Did you ever advance any funds to Mr. Schmitz?

A Never.

Q He does not owe you any money, sir?

A No.

Q He didn't borrow any money from you, sir?

A No.

Q Do you remember saying to Dr. Ulrich Mehrli that Mr. Schmitz was seeking about \$100,000 from Interhandel, but obviously that was too large?

A No, I never said such a thing.

Q Do you deny saying that?

A Absolutely.

Q What about this affidavit of Mr. Schmitz's father that was sent to the Department of Justice, did that go there with your approval?

2028

A What affidavit are you talking about. I don't even know what you're talking about.

Q Don't you remember this big affidavit that Mr. Schmitz delivered, caused to be delivered to the Department of Justice in 1952?

A Oh, that was the--- The one that Mr. Spofford and Mr. Schmitz worked on, is that the one you're talking about?

Q No. I'll show you what I mean -- the brown thing. In order that you won't be misled by this, Mr. Wilson, Plaintiff's 105 is Mr. Spofford's product, submitted under your name. You can see that readily.

A This is the one I thought you were talking about.

Q No. I'm referring to 131, which is D. A. Schmitz's affidavit of some length. Did you ever see that, sir?

A (Examining document) I may have. I don't remember.

Q Do you remember passing judgment on the wisdom of submitting that to the Department of Justice?

A No, I don't remember. This is the only document that I remember fully.

Q When you say "this," you mean the dark blue binder, which is Number 105.

A That's right.

Q You don't remember ever reading or examining 131?

A I don't remember it, no.

2029

Q Do you now recall that there came a time when Mr. Schmitz informed you that he was, his father was sending Number 131 to the Department of Justice?

A I don't recall that.

Q You don't recall then that you were displeased with this event?

A I don't recall it, no.

Q And you don't recall anything about the affidavit?

A About this affidavit?

Q Yes.

A I don't recall anything about that affidavit.

(Indicating document)

Q Mr. Wilson, I am now going to refer to pages 938 through page 943 of the transcript -- and that was again on your Direct Examination. If it needs my reading the words, I will read it to you. I want to get this back in focus. Do you recall testifying that after Dr. Schaefer had been to see the Attorney General in the last of October 1961, that you and Mr. Scofford and Dr. Schaefer had luncheon in New York at the Links Club?

A Yes.

Q Do you recall testifying that you said that Dr. Schaefer had a deal, said to you that he had a deal with the Attorney General on that day?

2030

A On the day that I met with him?

Q Yes, sir.

A That wasn't the day -- The deal had been made, as I remember it.

Q Well, you mean by that, that assuming you met on the first of November---

A I don't know when it was.

Q --do you mean he was telling you that the deal had been made on his visit of the previous day or two to the Attorney General?

A I don't know how long, how many days; but the deal had been made.

Q And did he tell you what the terms of the deal were at that meeting on November 1?

A No, not fully, but it was satisfactory to him.

Q Mr. Wilson, let me see if I can develop this to you a little more clearly: Is it not true that he never mentioned that a deal had been made when he saw you on the 1st of November, and that instead, he reported to you even as early as sometime in December that he was making progress?

A Not at the time--- At the Links Club, the meeting at the Links Club, he said a deal had been made, and that he had gone over the head of the trustee -- He admitted that he had gone over the head of the trustee and so on. I recall that very well.

2031

THE DEPUTY CLERK: Defendant's Exhibit Number 56 marked for identification.

* * *

BY MR. WILSON:

Q Mr. Wilson, I show you a letter from Dr. Schaefer addressed jointly to you and Mr. Snofford, under date of December 4, 1961, which is Defendant's Exhibit No. 56 for identification, and ask you to look at that and see if you can identify that as a communication which you received from Dr. Schaefer on or about its date.

A (Witness reading document) Yes.

Q You recognize the letter being one which you received on or about its date?

A No, I don't recall ever receiving the letter.

MR. WILSON: Well, your counsel have stipulated with us about this letter.

I will offer it in evidence, if the Court please.

MR. O'DONOGHUE: No objection.

THE COURT: Without objection, it will be received.

* * *

MR. WILSON: I would like to read it to your Honor.

THE COURT: You may.

2032

MR. WILSON: "The proposal we submitted to the Justice Department is still being dealt with there. It looks as if the competent authorities are under the illusory impression that the GNP is worth much more

and it would appear that they are trying to change the proposed proportions in their favor.

"Please find enclosed the letter Mr. Orrick has written to me. The formal situation has improved to some degree, because the Justice Department has accepted the proposal of the Swiss Government to allow the inspection of the Sturzenegger documents. As a result thereof, we shall no longer run the risk to lose the suit in the US courts on grounds of formal reasons.

"I hope I shall have more news for you before the end of this month; the major task, however, namely the sale that will most probably have to take place in New York and the considerable amount of dealings that will go therewith, still lie ahead.

"With kindest personal regards,

Sincerely yours,"

BY MR. WILSON:

Q You read it and I read it. This does not quicken your memory that you received that letter?

A No, I don't recall it.

MR. O'DONOGHUE: I have your copy of that enclosure,

2033 in case you---

MR. WILSON: Thank you. May I use it? I don't even know what it says, but mark it, Mrs. Bassett. Call it 5601, will you please?

THE DEPUTY CLERK: Defendant's Exhibit 56-A
marked for identification.

* * *

BY MR. WILSON:

Q Mr. Wilson, in 56-A, it seems -- and I think
counsel have no doubt about it -- that this is the enclosure
in Mr. Schaefer's letter to you. Would you be kind enough to
look at that and see if you remember having received that?

A The "Wilson" referred to is yourself, is it not?

MR. WILSON: I haven't even read it. Let me
see what you mean. (Reading document) I'm sure it is, sir.

* * *

2534

BY MR. WILSON:

Q Now, does that quicken your memory that you saw
that?

A No.

MR. WILSON: Since it's agreeable to counsel,
I'll offer it in evidence.

THE COURT: Without objection, it will be received
as Defendant's Exhibit 56-A.

* * *

MR. WILSON: May I read it? It's for the
edification of the two of us. It's by Mr. Orrick to
Dr. Schaefer, November 29, 1961.

"Dear Dr. Schaefer:

"I have read with interest your corres-

pondence to me and to the Attorney General.

"With respect to your letter to me, may I respectfully suggest that we reserve discussion of the points raised by the Board of Interhandel for further discussion, which I hope will be in the near future.

"We are presently studying your proposal and will consider in connection with it the points raised by the Board of Interhandel.

"Mr. Wilson and I have met twice, and we are trying to arrange further general conferences before we discuss the details of your proposal.

"With my very best wishes and kindest regards, I remain,

Sincerely yours,

William H. Orrick, Jr.,
Assistant Attorney General.

MR. WILSON: Did I offer this in evidence?

THE COURT: I understand it's been offered and been received.

MR. WILSON: I think it would be well, if the Court will permit, to staple the two together.

THE COURT: Very well. You may staple the two together.

THE WITNESS: Your Honor, I would like to make sure that the "Wilson" referred to was identified.

THE COURT: I think the record shows it's identified to Mr. John Wilson.

THE WITNESS: --because this, your Honor, reenforces the points that I made with Dr. Schaefer when I saw him. In spite of the fact that the trustee had full powers, Dr. Schaefer and Mr. John Wilson went and did business -- completely disregarded the trustee -- and I want to make that clear. This is what I learned when Dr. Schaefer came to see me.

BY MR. WILSON:

Q Didn't he tell you, Mr. Wilson, that he intended to go ahead with his own program with the Department of Justice?

A He did not.

Q Didn't he tell you and Mr. Spofford, to your knowledge earlier, that he wished to mount another course?

A He did not.

MR. WILSON: Will you mark that cable, please?

THE DEPUTY CLERK: Defendant's Exhibit 57 marked for identification. * * *

BY MR. WILSON:

Q Mr. Wilson, I show you Defendant's Exhibit 57 for identification which purports to be a copy of a cable from Dr. Schaefer to Mr. Spofford or Mr. Pryor, of June 24, 1961, and ask you if Mr. Spofford showed you that cable?

A I don't remember it. (Reading)

MR. WILSON: This, by stipulation, is offerable in evidence, and I offer it in evidence, if the Court please.

* * *

MR. WILSON: May I read it, sir?

THE COURT: Yes.

2037 MR. WILSON: It says:

"URGENT ATTENTION SPOFFORD OR PRYOR.
YOUR 20TH DONT RUSH NEGOTIATIONS NEXT WEEK ONLY
GENERAL MEETING HERE DO ALWAYS MOST ADVISABLE YOUR
JUDGMENT REGARDS SCHAFER."

MR. WILSON: Will you please mark this next letter, Mrs. Bassett, please?

DEPUTY CLERK: Defendant's Exhibit 58 marked identification.

(Defendant's Exhibit 53 marked for identification.)

BY MR. WILSON:

Q Mr. Wilson, I show you a letter from Dr. Schaf to Mr. Spofford, dated July 21, 1961, marked Defendant's Exhibit for identification, and ask you if you saw a copy of that, if Mr. Spofford showed you a copy of that?

A (Witness reading exhibit) No. I did not see.

MR. WILSON: I offer this in evidence under the stipulation, if the Court please.

THE COURT: It will be received.

(Defendant's Exhibit 58 was
received in evidence.)

MR. WILSON: May I read it, sir?

THE COURT: Yes.

2038

MR. WILSON: It's from Mr. Schaefer to Mr.
Spofford, dated Zurich, July 21, 1961.

"Dear Mr. Spofford:

"Thank you for your letter of July 17. It is
with deep regret that I learn of the death of your
father. I tender you my most sincere sympathy in the
great loss you have sustained and I would ask you to
kindly convey my heartiest condolences also to Mrs.
Spofford.

"As soon as possible, I shall call upon the new
American Ambassador. I am writing him today asking
him to grant me an interview.

"I am pleased to tell you that we have been able
to make a new contact with one of the highest author-
ities through the intermediary of a third party. I
would ask you to treat this news very confidentially and
hope I can report to you on further developments within
a few days. My message will, however, probably again
be private and personal.

"I trust we shall hear again from Mr. Orrick
and hope the Justice Department will acquaint you with

their point of view regarding the possibility of taking up negotiations with a view to settlement.

"With kind personal regards,

"Sincerely."

2039

BY MR. WILSON:

Q Mr. Wilson, the information transmitted by Dr. Schaefer to Mr. Spofford on or about July 21, 1961 that he had been able to make a new contact with one of the highest authorities through the intermediary of a third party," -- Did Mr. Spofford tell you of that on or about the time of this letter?

A No. He said something about "confidential" in there; didn't he?

Q I think it's mentioned in here. Are you suggesting that means confidential from you?

A I suppose so.

Q I show you a letter which is already in evidence, it's your Exhibit 143, a communication from Dr. Schaefer addressed to both you and Mr. Spofford, with a copy to me. I ask you if you recall receiving that letter on or about its date which is August 24, 1961?

A (Reading exhibit.)

Q Do you recall that letter, sir?

A Yes.

Q I show you now 144, and ask you if you recall

that that is your response to Mr. Schaefer, six days later?

A (Reading letter) Yes, I recall that letter.

MR. WILSON: These are in evidence. May I read this to your Honor?

2040

MR. WILSON: Number 21 Exhibit 143, from Dr. Schaefer, Zurich, August 24, 1961, addressed to Mr. Charles H. Wilson and to Mr. Spofford:

"Gentlemen:

"In the course of the last few weeks and days I have had various contacts with some quarters, and in particular with our Government, in order to talk over some aspects and possibilities which have cropped up in the GIP/Interhandel matter. I hope I can be in Washington in the second half of September or during the first days of October and discuss a new proposal of ours, both with you and the Justice Department.

"I should therefore ask you to kindly refrain in the meantime from exploring any tangible suggestions or solutions, old or new, with the Justice Department. I shall, of course, let you know immediately as soon as the date of my departure here is set.

"Through indirect channels I have heard that you were said to have submitted to some Government authority a proposal. If this were correct, I should be very

grateful for keeping me informed.

"With best personal regards,

"Yours sincerely,"

2041 MR. WILSON: And I think you did say, did you not, that the pink carbon, Number 144, was your response to that letter?

THE WITNESS: Yes.

MR. WILSON: And that letter reads as follows, if your Honor please:

It is from Mr. Wilson to Dr. Schaefer, dated August 30, 1961:

"Dear Dr. Schaefer:

"This will acknowledge receipt of your letter of August 24, which reached me upon my return to the city this morning.

"It is gratifying to learn that there are new possibilities in the GAT/Interhandel matter and that you will come over here the latter part of September or early in October to discuss them.

"Just to get the record straight with regard to my submission of a 'proposal' to the Government: The only department of the U.S. Government we have officially contacted is the Justice Department -- and that, many times. The only 'proposal' to them is that, in view of the complete history of the case which was compiled for

their benefit, it is indicated that the company should be returned to Interhandel forthwith.

2042

"In discussing the case with others (Senators, et al), various proposals have been made by this but I have refrained from official consideration of any of them.

"Until about two weeks ago, when the Attorney General's office got what they regarded as an adverse decision from the Swiss Government regarding certain disclosures they had sought earlier, there was reason to believe that shortly we might have received advice from the Assistant Attorney General regarding our summary of the case history and what course they would be willing to pursue for settlement.

"I will discuss the matter further with Mr. Spofford when he returns from his holiday about September 11 and I note that he has also received a copy of your letter of August 24.

"We shall await with interest your arrival in this country within the next few weeks.

"With best personal regards,

"Sincerely yours,

/s/ Charles E. Wilson

BY MR. WILSON:

2 Had you not indicated to Dr. Schaefer, as early as December 19, 1960, that your resignation or renunciation

could be forthcoming even upon a telegram request?

A I don't remember that.

DEPUTY CLERK: Defendant's Exhibit 59 marked for
identification.)

2043

BY MR. WILSON:

Q I show you Defendant's Exhibit 59 marked for identification, which purports to be a letter from you to Dr. Schofer dated December 19, 1960, and ask you if you will peruse it, and particularly the next-to-last paragraph.

A (Witness reading letter.)

Q Mr. Wilson does that letter refresh your recollection that on or about its time -- and by that letter, I mean Defendant's 59 for identification -- that you were displeased with Mr. Brubacher?

A Yes.

Q And---

A And I go on to say that if they agree, if Schofer agrees, or Interhandel agrees with Dr. Brubacher's statement, that an American citizen should not be the trustee, why, why should I worry.

MR. WILSON: I offer in evidence Defendant's Exhibit for identification 59.

MR. O'DONOVHIE: It's already---

THE WITNESS: They never---

MR. WILSON: Ross, there are two December 19th

letters. The other one is in.

2084

MR. O'DONOGHUE: Let's make sure.

MR. WILSON: 161 is the other letter.

MR. O'DONOGHUE: Let's make sure.

MR. WILSON: That's the last one.

May I offer this in evidence?

MR. O'DONOGHUE: No objection.

THE COURT: Without objection, it will be received.

* * *

MR. WILSON: I will read only this one paragraph that I particularly called the witness's attention to.

THE COURT: Yes.

MR. WILSON: The next-to-the-last paragraph.

"In conclusion, let me say that I did not (and do not now) pass judgment on Mr. Brupbacher's statement that a Swiss citizen should be the Trustee and carry on the fight to have the property restored; but I do want to make it clear to you, Dr. Schaefer, that if you and your colleagues agree to Mr. Brupbacher's demands as stated to me, you should have no embarrassment concerning my association with the case. A cablegram can terminate it."

BY MR. WILSON:

Q Do you recall writing Dr. Schaefer on March 26,

2085 1962, as per Defendant's Exhibit Number 7---

BY MR. WILSON:

Q (Continuing) --which is in evidence?

A (Witness read document). What's your question?

Q Do you recall sending that letter to Dr. Schaefer?

A Very well.

MR. WILSON: This is in evidence. If the Court please, I would like to read it to your Honor.

THE COURT: You may do so.

MR. WILSON: The letter is dated March 26, 1962. Let me get the cart before the horse.

BY MR. WILSON:

Q I show you Number 172, Plaintiff's, which is in evidence, and ask you if you can identify that as a copy of the letter from Dr. Schaefer to you, to which you responded by Defendant's Number 7?

A (Witness read document). Yes, uh-huh.

Q When you say "uh-huh", do you confirm that 172 was received by you on or about its date, and that Defendant's Number 7 is your reply to it, sir?

A I do.

2046

MR. WILSON: I will read these, sir, with the Court's permission, and I will read them in chronological order, if I may.

THE COURT: Very well.

MR. WILSON: This is Dr. Schaefer to Mr. Wilson,

Arthur Plimack's 172: Zurich, February 12, 1962.

"Dear Mr. Wilson:

"In our last conversation in New York I had the pleasure of outlining to you that, through the intermediary of a mutual friend, two meetings with the Attorney General and his assistants could be arranged and that, in the course of these talks, the possibility of an arrangement was discussed. In connection therewith, quite a number of questions were being dealt with and which may only be discussed on the basis of documents held by Interhandel. These circumstances and the US Government's desire to coordinate possible talks for a settlement with the inspection conducted in the meantime in Basel by a team of the Department of Justice in connection with the lawsuit, induced me to ask you at the time to take no further steps in Washington in your capacity as Interhandel's Trustee. You were kind enough to agree thereto and you pointed out to me again that you were anyhow prepared to give up your trusteeship as soon as such action should prove desirable.

2047

" In earlier statements, namely in your letter of December 12, 1960 you wrote to me the following: '.... you should have no embarrassment concerning my association with the case. A cablegram can terminate it.' And in your letter of March 27, 1961 you worded the same offer

as follows: '....It goes without saying that if you and your colleagues at any time find a means of successfully terminating the Interhandel controversy which does not involve me as your trustee, you should inform me and I shall be glad to take the necessary action to terminate my functions.'

"I have had in recent months repeated telephone conversations with Mr. Robert Kennedy and Mr. Orrick and furthermore an interview with the Assistant Attorney General here in Zurich. It seems that our negotiations are approaching a medium line and we are therefore hopeful to reach an agreement by continuing along this road which, as you know, was opened for us direct. I think that next month the matter will reach a stage where the situation may clarify itself.

"In the meantime, I heard from Mr. Orrick that you called the Justice Department over the telephone informing them that your power of attorney as Interhandel's Trustee was still in force and had not been revoked. This has also been reported to me by Mr. John J. Wilson.

2048

"As our matter is a rather delicate one, we may in no way give rise to any doubts as to Interhandel's right to conduct - according to our mutual agreement with you - direct negotiations with Washington. Owing to Mr. Orrick's report, however, we find ourselves somewhat in a dilemma.

In order to clarify the matter, I would therefore reiterate to you the fact that we should very much like to conduct these talks along the new lines which were initiated by us.

"I thank you for your kindness and understanding; and I would, accordingly, ask you to consider the trusteeship you so kindly agreed to accept two years ago as being no longer valid. I should, however, like to stress that, as already outlined to Mr. Scofield when I met him in New York, that this step only applies to your powers as Interhandel's Trustee. As a matter of fact, the really difficult problems will crop up not until the negotiations may have reached a successful end. Then, we shall be called upon to discuss such questions as the return of CAP to private ownership; we shall have to study the best possible solution for us and try to obtain the best possible value for our share. As all these aspects will prove to be rather delicate and materially of utmost importance, we shall anyhow have to be able to rely on our advisors. As I implied at the time in New York, we hope we may then again address ourselves to you and Mr. Scofield, on condition of course that the outcome of the negotiations gives us the right to play a part in the liquidation or the return of CAP to private ownership.

"Our contract has anyhow been considered on your part and ours as a gentleman's agreement, which could be terminated or altered if and whenever the general interest would dictate such change.

"I was rather surprised to learn that Mr. R. A. Schmitz apparently does not share this opinion. He wrote us the enclosed letter dated January 17. His point of view is fully incomprehensible to me and, accordingly, I have refrained from giving him an answer.

"It may well be that, after having received a final reply from the Department of Justice, I shall be in your city and Washington in the course of the next month. It would be a matter of particular pleasure for me to see you and Mr. Snofford on that occasion and give you a report on the whole situation. I hope it will be a matter, of course, that we may consider you and Mr. Snofford as our friends and advisors also after the formal termination of the trusteeship, and I shall be pleased to keep you informed about a possible agreement with the US Government.

"With kindest personal regards,

/s/ A. Schaefer."

BY MR. WILSON:

2070 There is some handwriting here indicating that Bob Schmitz's letter was not an enclosure. Is that your handwriting, sir?

A No.

Q Thank you. Now, was recalled by Defendant's Exhibit Number 7 under date of March 26, 1962 to Dr. Schaefer's letter of February 12, 1962, which is Plaintiff's Exhibit Number 172.

"Dear Dr. Schaefer:

"I have returned from an absence from the city of several weeks to find your letter of 12 February 1962.

"First, I want to set your mind at rest as to my intention concerning the trusteeship. I am only interested in continuing to hold my power of attorney so long as its exercise can contribute to the solution of the Interhandel problem and so long as there is mutual confidence between us. Certainly, this mutual confidence does not any longer exist. You have made this plain on your part in various ways which I need not go into. For my part, I am frank to say that you have dealt with me in a less open manner than a satisfactory relationship requires, and that your methods of proceeding are not what I understood they would be when I accepted the power of attorney. I am referring particularly to the extraordinary steps you took to reach the Attorney General without my knowledge at a time when we had agreed with Mr. Orrick on an orderly procedure which showed real promise of settlement. Also, despite your assurance to me in our last

meeting that I would be kept fully informed of your direct negotiations with Mr. Orrick, so that I might be in a position to help work out a financing plan with you, I remain completely in the dark as to the present status of the matter or the basis you are now working on. Under these circumstances, the continuation of the trusteeship can not serve any purpose and I have, therefore, decided to surrender my power of attorney as soon as the necessary formalities can be completed.

"For the purpose of terminating the trusteeship, I am preparing a simple accounting showing the payments from the trustee's account at Morgan Guaranty Trust Company. I am also asking Mr. Spofford to render me a statement for his services during the trusteeship, which will be submitted to you with my account. Mr. Spofford will also prepare the necessary mutual releases for signature by me and by Interhandel upon authorization of its Executive Committee, that is, in the same manner in which the power of attorney was granted. When these releases are exchanged, I will surrender my power of attorney and the trusteeship will terminate.

2052

"There are only two other matters in your letter that seem to me to require comment. First, there is no necessity for you to quote my various statements with regard to my power of attorney. I have always taken the

position with you which I have reaffirmed in this letter-- that if the trusteeship should at any time no longer appear useful, it would be terminated by mutual agreement. Obviously, I had nothing to do with Robert Schmitz' letters to you on this subject.

"Next, you misunderstood the purpose of my call to Washington, of which you heard from Mr. Orrick and John Wilson. This call was prompted by the fact that Robert Schmitz, upon his own initiative, had prepared a lengthy affidavit by his father, and on the advice of his or his father's counsel, disclosed the fact and part of the contents of this affidavit to Mr. Gehren in the Department of Justice. I was concerned at this move, and the purpose of my call to Orrick (Schofford being away at the time) was to assure him that it had nothing to do with the trusteeship.

"You will hear from me further when I have the documents prepared for the winding up of the trusteeship."

BY MR. WILSON:

Q Mr. Wilson, does that last piece that I read you refresh your recollection of your referring to the elder Schmitz' affidavit at any time?

A No. No, I don't recall it.

* * *

BY MR. WILSON:

Q Mr. Wilson, there were two earlier letters

that I overlooked to call to your attention. They are both in evidence. One is Plaintiff's Exhibit 163 -- and I give that number first because it refers to a letter from Dr. Schaefer to you dated February 9, 1961, and Plaintiff's Exhibit 102, which is your letter to Dr. Schaefer of February 24, 1961, in which you acknowledge receipt of Exhibit 163, of Plaintiff. Would you satisfy yourself that those letters passed between you in that manner?

Let me say in regard to the longer letter, I don't intend to ask you any questions about it. All I want you to do is check the letter to be satisfied that that is a communication of yours.

A (Witness: read documents.)

Q Are you satisfied these letters passed between you, sir?

A Yes.

Q --on or about their dates?

2954 A If they are dated that way -- whatever the date would be.

Q Mr. Wilson, after the election of John F. Kennedy as President of the United States, did you visit a member of the Kennedy family in Palm Beach, in regard to the General Aniline case?

A No.

Q Did you conclude soon after you became active

in this matter, say in the summer of 1960, that the Department of Justice was the real barrier to a settlement in this case?

A I don't understand the question. That was the only department we had to deal with. As I understand it, they were running the case from their standpoint, from the U.S. Government's standpoint.

Q You were seeing members of Congress upon this subject, weren't you?

A Only when there was a threat of a bill being passed and immediate sale of General Aniline.

Q Did you not see Secretary Horter and Secretary Dillon on the subject of this case?

A Secretary Dillon and who else did you say, Chris---

Q Secretary Horter of State?

2355 A I don't remember seeing them about the case. I may have, but I don't remember. When I undertook the trusteeship, I took whatever steps I thought would be helpful. It may be along the line I saw others in it. I don't remember particularly.

Q In answer to my question as to whether in the summer of '60, you concluded that the Department of Justice was the real barrier here, your answer was, "That was the only Department I dealt with." Let's back up. Is that a correct answer to my question?

A Well, it was the Department I concentrated on, not it that way.

Q Did you diagnose the situation in the Summer of 1960 that the principal barrier to a quick and just settlement continues to be the Department of Justice?

A Yes.

Q You had had meetings with others in Washington for the purpose of establishing a better understanding of all the fundamentals of the case, hadn't you?

MR. O'DONOGHUE: Can we have a time on this?

MR. WILSON: Summer of 1960.

THE WITNESS: Yes, I had made inquiries in other---

BY MR. WILSON:

Q I'll pick out phrases from Defendant's Exhibit for identification 60, and I ask you, Mr. Wilson, to cut this short, if you'll look at it and see if you can identify it as a report you sent to Dr. Schneider on or about August 24, 1960?

A (Witness reads document). Yes, I recall that letter.

MR. WILSON: I offer it in evidence as part of the stipulation, if the Court please.

THE COURT: Very well. It will be received.

MR. O'DONOGHUE: May I see that? I don't know if we have a copy.

MR. WILSON: He's initialed it.

MR. SPOFFORD: That means he saw it.

I don't have any objection.

MR. WILSON: I would like the time to read it.

THE COURT: Very well. It will be received.

* * *

BY MR. WILSON:

Q Mr. Wilson, I just discovered that in connection with a series of letters I showed you are two letters -- there is a third that I would like to connect with them.

MR. WILSON: Number 17?

2057

BY MR. WILSON:

Q Mr. Wilson, was it your concept that you could terminate the trusteeship any time you chose to do so?

A That I could terminate it?

Q Yes, that unilaterally you could terminate it.

A I never gave it any thought. I had no intentions of terminating it unless the other side, unless the principals didn't follow out the provisions of the document I got.

Q Number 105, which is the document prepared by Mr. Spofford and filed under your name, you had read this, hadn't you, 105?

A Yes, I think I did.

Q All right. Will you turn to page 2; under the title, Figure One. Position of the Trustee -- and since I want you to ^{read} read it, I wonder if you would read it -- it's about eight lines -- Read it aloud for his Honor.

A Position of the Trustee, is that what you want?

Q Yes.

A "The broad terms of the Power of Attorney grant to Mr. Wilson, in a trustee capacity, full and independent authority to conclude any settlement of the controversy as to the vesting of Interhandel's assets, and in connection therewith to agree upon the terms of any disposition of the shares or properties of GAT. There is no limitation in time
2058 "upon the power of the trustee, although he is free to surrender them and terminate his functions at any time."

Q Does that refresh your recollection that you reserved that prerogative, sir?

A I don't remember--- I didn't w--- That's what Mr. Snofford, that's his advice about it, so I go by him.

Q Now getting back to, complete the continuity of three pieces of correspondence, I read to the Court just before the recess the totality of Plaintiff's Number 172 and Defendant's Number 7. Now, I had overlooked a letter which is marked Defendant's Exhibit for identification number 61, which purports to be a communication from Mr. Schaefer to you, of June 8, 1962. Would you see if you can identify that, sir?

A (Reading document)

Q Did you receive that letter on or about that time,

sir?

A I don't remember. I don't remember.

MR. WILSON: If the Court please, this goes in under the stipulation anyway.

THE COURT: All right.

MR. WILSON: May I offer it in evidence, sir.

THE COURT: Yes. It will be received.

2059

* * *

MR. WILSON: The two previous letters were dated respectively, February 12, 62 and March 26, 1962.

This is June 6th, 1962. It's from Dr. Schnofer to Mr. Wilson:

"I would apologize for my failure to write to you earlier in reply to your letter of March 26. I have kept the matter pending awaiting the documents which you promised me for the winding up of the trusteeship.

"While going through your letter, I noticed some remarks which I think must be based on some misunderstanding. I would mention in this connection, in particular, your comment that I contacted the Attorney General 'at a time when we had agreed with Mr. Orrick on an orderly procedure which showed real promise of settlement.' This is similar to a remark which Mr. Robert Schmitz made to me in a letter recently.

"If I am correct, you had not informed me that such a procedure with Mr. Orrick had been agreed upon, and your above-quoted remark disturbed me. I showed your

letter to Mr. John Wilson, and he was so concerned that he discussed your statement with Mr. Orrick. Mr. Orrick informed Mr. John Wilson that he was not aware of the agreement as to procedure which you mentioned to me. As
 2050 "there must have been some misunderstanding in this respect, I wish you would clarify the situation for me.

"I thank you in advance for your comments which will certainly put the matter straight.

"With kind personal regards,

"Sincerely yours,"

BY MR. WILSON:

Q What was the "orderly procedure" which you alluded to in your letter of March 26th, "which showed real promise of settlement"?

A It was work that had been done between Mr. Orrick, I believe, for the Department of Justice, and my attorney -- Mr. Spofford had informed me that it looked very satisfactory, that a settlement could be brought about in a reasonable length of time.

MR. O'DONOGHUE: Your Honor, this has not been offered in evidence, I don't think. It's been read -- this Defendant's Exhibit 61 for identification. Our agreement was that we could object as to competency and materiality. I object to the portions of the letter reporting hearsay, comments between Mr. Wilson and Mr.

Orrick and what he told Dr. Schaefer. I don't think it's admissible for that purpose, and I object to it.

3061

THE COURT: What do you say, Mr. Wilson?

MR. WILSON: I would say that this is about the 95th letter in which Hearney was reported by some writer. I'm sure it is not raised at this late date.

THE COURT: I will overrule the objection.

MR. WILSON: Have I offered everything I have identified?

Yes. Bennett has called my attention to 61 for identification, which Mr. O'Donoghue was just commenting upon, we offer it in evidence.

THE COURT: It will be received.

(Defendant's Ex. No. 61 was
marked and received in evidence.)

MR. WILSON: I don't want to offer at this time -- I will do it before the case is over -- Defendant's No. 54 and 55 for identification.

That completes our Cross-Examination of Mr. Wilson.

REDIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q Mr. Wilson, were you ever asked to resign by Dr. Schaefer or anyone else from Interhandel?

A Only--- You mean prior to my own giving---

Q Yes.

A (Continuing) -- my resignation?

Q Yes.

A No, not that I know of.

Q Did you seek this trusteeship?

A Far from it.

Q How did you happen to accept it?

A Well, Mr. Schmitz had told me of the origin of the takeover by---

* * *

Q Mr. Wilson, I show you Plaintiff's 124, which is a letter from Robert Schmitz to Dr. Schnefer dated January 17, 1962 and ask you whether or not you saw that on or about that date?

A (Witness reading). I don't recall reading the letter in form; but the subject matter, I was advised of it by Mr. Schmitz.

Q Did he ask you your advice concerning the same?

A I think not. He told me what he was doing, and I had no criticism of it.

Q And that was the extent of it -- you had no criticism of it. Now, Mr. Wilson, do you remember that in Paris, when the trusteeship powers and the Resolution of the Board of Interhandel was shown and discussed, was there some discussion about a limitation concerning the same in respect to your notifying Interhandel when you proposed to sell the company?

A Yes. Yes. There was--- I remember Dr. Schrofer said, while I had full power under the document that had been provided, that he would--- He asked me if I would, when some proposition was being considered, at least tell them about it.

2064 Q And did he ask you to sign a letter to that effect?

A I don't recall that I wrote such a letter, but I'm not sure.

Q Was there ever any other notification upon your return suggested other than that at that time?

A No, that was the only notification that I---

Q Was there ever any discussion that Interhandel had a right to terminate the trusteeship without your consent?

A No.

Q Was there ever any suggestion that there was any way to terminate it except by your resignation?

A No.

MR. O'DONOGHUE: That's all.

* * *

2065 MR. WILSON: We have no Recross, your Honor.

THE COURT: You have no further Redirect, Mr. O'Donoghue?

MR. O'DONOGHUE: Your Honor, I have none. I think possibly there is in evidence a letter that was written, signed by Mr. Wilson at the time of the Paris meeting, and

I was trying to find it. We all know it exists, but whether it is in evidence, or where it is, I can't seem to find it. I just wanted to ask him if he did sign such a letter.

MR. WILSON: Can I satisfy you by saying that we agree he did send such a letter.

* * *

2067 ask you if you can identify that.

A (Witness reading) Yes, I can.

Q What is this? Did you sign and deliver that letter to Dr. Schaefer at the Paris meeting?

A I can't tell you when it was delivered. I remember the letter was--- I mean, Schaefer said he wanted something like this, wanted an agreement. I thought it was just a verbal agreement between us. I don't remember the letter being exchanged on the subject.

THE COURT: But having seen the letter, you don't question its authenticity, do you?

THE WITNESS: I don't know whether I ever signed such a letter. Have you got the signed copy?

MR. O'DONOGHUE: I don't, no.

THE COURT: Oh, I see. Well, at any rate, the letter has been received in evidence.

MR. O'DONOGHUE: It has been received in evidence.

BY MR. O'DONOGHUE: If I can just ask one last question:

3 Aside from this, Mr. Wilson---

2068 A May I just finish a point that I think is important
in that letter? I can't believe that I signed such a letter
at the Paris meeting, because at the time, Dr. Schofer made
it crystal clear that he wanted me to have nothing to do,
no discussions with Mr. John Wilson.

* * *

BY MR. O'DONOHUE:

7 I show you what appears to be a copy of Plaintiff's
No. 132, and ask you if that's your signature?

4 That's my signature, all right. I still don't
understand how that got into it, but there it is!

7 Was there ever any other modification of this
agreement in any way?

4 Not that I recall.

MR. O'DONOHUE: I have no further questions.

MR. WILSON: No questions.

THE COURT: So I understand you have concluded
your examination and cross-examination of Mr. Wilson, and
Mr. Wilson may now be excused as a witness?

* * *

ROBERT A. SCHWITZ,

Plaintiff,

CIVIL ACTION 85-67

SOCIETE INTERNATIONALE,

Defendant.

Washington, D. C.

Monday, February 2, 1970.

VOLUME XI

(Pages 1271 - 1411)

Plaintiff's
Copy

MARIE S. TAYLOR
Official Court Reporter
Room 6812, United States Court House
Washington, D. C.

* * *

1273

MR. O'DONOGHUE: I would like to call Dr. Schaefer as an adverse witness, with the right to cross-examine him.

THE COURT: Do you have any objection?

MR. WILSON: Yes, I have an objection to that. We are ready to put him on as a witness of our own and I think under these conditions, Mr. O'Donoghue announced the other day that with the exception of Mr. Spofford's deposition, that he was ready to rest.

And that while I clearly see I have a disadvantage in making this objection because I might be able to ask leading questions, but for the sake of order this is not fair to call our principal witness as his witness when he is here for us to go on, and he stated he was ready for us to go on with him.

* * *

ALFRED SCHAEFER

1274

was called as an adverse witness on behalf of the plaintiff, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q State your name please.

A Dr. Alfred Schaefer, from Zürich, Switzerland.

Q What is your residence?

A Zürich, Switzerland.

Q Do you have an address there?

A Yes, I have an address there. Union Bank, Bahnhofstrasse 45.

Q What is your home?

A Seestrasse 14.

1275 Q Dr. Schaefer, what is your position with Union Bank?

A I am Chairman of the Board.

Q Is that the highest position in the bank?

A Yes.

Q How long have you held that position?

A Since five years. Before I was Chief General Manager for about 20 years.

Q For five years and you were 20 years in the previous job?

A Yes.

Q In other words, you were not the head of the bank until five years ago?

A Well practically, both executive jobs. Now it is, let's say, Chairman. It depends a little bit on personalities. In one bank it can be Chief Executive Officer, and in another it is just advisory capacity.

* * *

Q You have been Chief Executive Officer for sometime then?

A Oh, yes.

Q For how long?

A About 20 years.

1276

Q When did you first become interested in Interhandel?

A All the Swiss banks more or less were interested in Interhandel because the Interhandel shares were quoted at the Stock Exchange and there was a lot of ups and downs in the prices quoted because the lawsuit naturally influenced the prices of the Stock Exchange very much. Therefore, the banks just as banks were interested. And we are worried about the future of Interhandel and that is your question. The banks finally decided to take, if possible, major interest in Interhandel so as to defend the Interhandel case in a responsible way accepted also by our own government.

Q When was that done?

A That was done in '58.

Q At that time what was the outstanding stock of Interhandel? What were the number of shares then outstanding?

A I don't know, but the majority or the biggest influence was held by Mr. Sturzenegger, because these were voting shares. They had a qualified vote which was always a handicap for the company. This was abolished before the banks took over.

Q The voting shares were abolished, but he continued

to own 13,000 shares of the stock?

A Yes, but he sold the biggest part of these shares to the incoming banks.

Q That was in 1959, was it not?

A Yes.

1277

Q And so in 1958 he still owned a controlling interest in Interhandel, did he not?

A I wouldn't say "a controlling interest," but a very big interest.

Q He had not the majority?

A He had the largest single interest of anyone. Oh, yes.

Q And the rest of it was widely held?

A Widely held.

Q When did Union Bank first purchase any of the stock in Interhandel?

A I think this must have been in '58, beginning of '58.

Q Not before then?

A Not before. Naturally customers of ours had shares.

Q What did you say?

A Customers of our banks, like all the other customers of the other banks, had shares because it was widely spread in the public.

Q And as the result of Dr. Sturzenegger's support, you were elected the chief officer of Interhandel?

1278 A I wasn't the chief officer of Interhandel. Interhandel had a management. All the three big banks came into the board -- all the three big banks had a representative on the board, and the Chairman of the Swiss bankers association took over the chairmanship.

Q Did you, in effect, have executive control over Interhandel?

A No, but we had certainly the biggest part in the shares. Therefore practically our influence was, I would say, extensive but quite considerable.

Q Was that after you bought Dr. Sturzenegger's shares?

A Yes.

Q But not before?

A Not before.

Q But you had been on the Board of Interhandel prior to your purchase of Dr. Sturzenegger's shares, had you not?

A Yes, just a few months, if I remember correctly. Yes,

Q Well, did you speak for Interhandel at that time?

A No, it was the Chairman who spoke, but naturally ---

Q Who was he?

A That was Mr. De Loius, Private Bank of Geneva and Chairman of the Swiss Bankers Association.

Q Were you personally doing anything on behalf of Interhandel to investigate the situation to do, if you could, anything about it?

A Oh, yes, we investigated it before in order to make sure that the situation was in order, and that we wouldn't be exposed pursuing our claim against the Government of the United States, that there wouldn't be anything which would be -- would handicap us. We considered ourselves as trustees for Interhandel and for the public. That means the shareholders.

Q When you say "we," who do you mean?

A The three big banks.

Q Who were the other representatives on the Board of the other two banks?

A Mr. Reinhardt of Credit Suisse and Mr. Pfenniger of Swiss Bank Corporation.

Q How long did they continue on the Board?

A For about two years.

Q And then they resigned?

A Then they resigned.

Q Do you know how many approximately shares of Interhandel stock there were in 1958?

A I don't know.

Q Do you know the same number continued until the merger with Union Bank?

A Oh, yes.

Q How many existed at the time of the merger?

A I don't know.

Q Mr. Saager has suggested something like 110,000.

A Yes, sir, about 110,000 shares -- not quite, I think. There were about 1 percent which were never found, which probably got lost during the war.

1280 Q Of these 110,000 shares, how many were held by the public, that is, including the banks and individuals?

A About 75,000, I would say, about a quarter or up to 30 percent was held by the banks, especially by my bank.

Q About 30 percent, you say?

A Yes.

Q --- was held by your bank and about 75 percent of the shares were outstanding altogether?

A Yes.

Q Weren't some of them held by the United States?

A There were shares held by the United States Government which were not in circulation.

Q But that is included in that 110,000?

A That is outside of this 110.

Q Outside of the 110,000 shares. Now I understand that there were something like 58,000 full paid shares in the Treasury of the United States and something like 26,000 half-paid shares?

A I think so, yes.

Q And so, that meant that altogether there were a couple of hundred thousand shares?

MR. WILSON: Now I object to that statement of fact, if that is what it is intended to be because I know it is not an

accurate statement of fact.

THE COURT: I think he is stating it as a question. I suppose the witness can answer.

MR. O'DONOGHUE: Yes, it seems to me I can ask questions.

1281

THE COURT: You may proceed, Mr. O'Donoghue.

BY MR. O'DONOGHUE:

Q Is that, then, the total number of 110, plus 58 plus 26 were outstanding?

A The 58 and 26 were never quoted at the Stock Exchange. They were just held in custody.

Q And did GAF, General Aniline and Film own some of Interhandel stock?

A I don't know, not of the quoted shares in Switzerland.

Q How many shares of stock of Interhandel did Union Bank own after the purchase from Dr. Sturzenegger?

A I would say about 20,000 to 22,000 shares.

Q Did that give you -- that did not give you a majority of the stock then?

A No.

Q And you had to cooperate with the other banks for that purpose?

A Yes, and especially with public shareholders in the General Assembly.

Q Did you familiarize yourself with the situation as

far as the possible return of Interhandel shares were concerned, before you purchased them?

A Indeed we did.

Q What did you find that situation was, let's say, in 1958 and '59?

1282

A That there was no claim at all from German-interested parties, that there was never a promise to give them back their Interhandel shares, that it was really a Swiss company, and that the lawsuit was absolutely justified, legally and morally speaking.

Q What about the status of the lawsuit at that time?

A The lawsuit went on since about ten years. The decision for the Swiss was that we had to give -- had to prove that this was not German tainted.

Q What was the progress of the lawsuit? Was it anywhere near termination?

A Not at all. We had the impressions that it would probably go on for years.

Q That is what you were told by your counsel here in Washington?

A By our counsel and by our own inquiries and especially by the situation we found regarding the lawsuit and the procedure.

Q And there was also a suit pending in the World Court, was there not?

A World Court, but that was only a formal suit. The World Court decided that they could materially decide this lawsuit only if the Swiss have exhausted all the possible procedures in the United States.

1283 Q So that if you were unsuccessful in your suit here in the United States, you would be entitled, as you understood it, to go back to the World Court and litigate it there?

A Yes.

Q Was there legislation pending in the Congress here for the sale of General Aniline and Film?

A It was twice, if I remember correctly. It was twice attempted.

Q And those bills were brought up from time to time in Congress?

A Yes, and the Swiss Government protested against it.

Q Was the protest allowed?

A I think so, and that was the decision of the World Court.

Q The understanding was that if a bill was passed to sell the GAF stock, you would have returned to the World Court to attempt to stop it, isn't that true?

A Yes.

Q So there was that threat involved?

A Yes.

Q What was the situation as you found it as far as General Aniline and Film was concerned about the health and activity of that company?

1284 A We began to be worried because we saw that it wasn't really prosperous, that it was for years in the hands of Government and that it wasn't following the same pattern as other successful American companies.

Q That it was forbidden to merge with other companies?

A It was forbidden to merge and we had no direct influence at all over General Aniline.

Q And I suppose it could not have, well, issued stock or bonds or anything of that kind?

A No.

Q And you regarded that as hampering its competitive situation?

A Yes.

Q Especially in regard to other dye and photographic companies, Kodak, for example?

A Yes.

Q So, the prospect was, when you took over that, this whole matter would continue for years and years and years and there was no prospect of a prompt settlement, was there?

A That is true. We tried repeatedly and all our trying was not successful.

Q What did you try?

1285

A We tried, we sent one of the board members -- that was Mr. Pfenninger -- over to Washington to talk with Mr. Townsend, then Alien Property Custodian, but there was no settlement. There was just an illusion -- perhaps one could find a settlement on the basis of 50-50, but we had no written offer, no direct proof, and we thought at this time that settlement on this basis would be highly unsatisfactory, because til now we always tried to get General Aniline back.

Q In toto?

A Yes, we hoped so.

Q That was more or less the whole lawsuit? You regarded yourself to having it all returned, didn't you?

A Certainly.

Q Did you do anything besides sending Dr. Pfenninger over to talk to Mr. Townsend? Did you send anyone else over or did you attempt to use any other influence?

A Not at this moment.

Q When did you first meet Mr. Schmitz, Robert Schmitz?

A Mr. Robert Schmitz came first in October of '53, I think, to Zürich.

Q Did he talk with you then?

A Yes.

MR. WILSON: Let's get the date straight. It is '59. Let's not start off on an erroneous premise.

THE WITNESS: '59.

1286

BY MR. O'DONOGHUE:

Q He did come there in '58? You heard that?

A No, no, I met him the first time five months before the meeting in Paris and that was in April of '60.

Q What -- had Dr. Sturzenegger told you anything about Robert Schmitz?

A No.

Q You never heard of him before that?

A No.

Q Did you know his father?

A No, no.

Q Did you know who his father was?

A I knew by name, yes.

Q What did you know his father was?

A That he was the top executive officer of General Aniline -- president of chairman, I don't know.

Q Did you ever meet him?

A No.

Q Tell us who introduced you to Robert Schmitz.

A Dr. Frey, a lawyer in Zürich.

Q Had he communicated with you before that about ---

A No.

Q He hadn't told you that he had worked with Robert Schmitz earlier about the possibility?

A No.

1287

Q Have a trusteeship?

A No.

Q You didn't know anything about it?

A --- anything about it.

Q What did Robert Schmitz suggest when he came to see you?

A He made a very good impression on me because he said that he was fully informed about the lawsuit, about the situation of General Aniline, that he thought it right that we get it back, that he estimated that the Swiss claim was fully justified, and that at the same time he thought that there should be a crusade for justice and for giving it back, and fully giving it back, and that he would like to fight with us or for us, especially also in order to restore the prestige of the family and to restore the claims or the position of his father who at his opinion was unjustly treated at General Aniline by the Government.

Q In discussing this matter with Robert Schmitz, you did find he was well informed about the affairs of Interhandel and General Aniline and Film, did you not?

A Yes, but not in details. We talked just in generalities. He said he would help to get it back.

Q How did he suggest that this might be done?

A He suggested after the beginning of our conversation

1232 that we should hand over the whole claim into the hands of a trustee and that eventually he could find the man who as a trustee would be able to get in back for us. That was Charles Wilson.

Q Did he name Charles Wilson?

A He named Charles Wilson, yes.

Q Did you know Charles Wilson?

A No -- only by reputation.

Q Did you know his reputation?

A Certainly.

Q Well, did you know what positions he had occupied in this country?

A Yes.

Q You know what positions he had occupied with the Government?

A Yes, indeed.

Q Did this idea appeal to you?

A Certainly, very much.

Q You thought it was an excellent idea, did you?

A I thought it was a good idea.

Q You would not go so far as to say "excellent"?

A Excellent.

Q Very well. Now did Robert Schmitz indicate to you that he might be able to persuade Mr. Wilson to act for you?

A He said that he would try.

Q Did he say that he was a friend of his?

1289

A He said that he knew him very well.

Q Knew him very well. Well, at that time was a memorandum drawn up in your office?

A No, I don't think so. Mr. Schmitz afterwards wrote a long letter establishing his ideas about this principal of the question. That means to get it back, but I don't remember when the letter was written.

Q Was it in the form of a memorandum?

A Yes, I think so.

Q Did he send it to you?

A I think so, too, yes.

MR. O'DONOGHUE: May I have Plaintiff's 22?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 23 and ask you if you know what that is?

A Yes, I think that was a memorandum he submitted to us,

Q Did you make any comment on that to him?

A Well, I just said that it would be a very good thing for us all if Mr. Charles Wilson would accept the trusteeship.

Q Did you indicate your approval of that memorandum?

A I did.

Q I beg your pardon?

A I did.

Q Did that state your understanding with Mr. Schmitz?

A Well, there wasn't an understanding. He just promised
1290 that he would try to convince Mr. Charles Wilson.

Q What plan then was outlined as to what the course of action he would take and what he would do as far as keeping you informed was concerned?

A Well, he said that he would inform me immediately if Mr. Charles Wilson would keep it, and that then we should meet altogether in order to discuss the possibilities.

Q Was any meeting set up, then?

A Not at the first meeting when I saw Mr. Schmitz. Afterwards there was set up a meeting for April in Paris.

Q Wasn't there considerable correspondence prior to that time and exchange of cables, et cetera?

A I think so.

Q Who was Dr. Wehrli in the organization?

A He was Vice Manager, Sub-Manager of the bank. Dr. Ulrich Wehrli.

Q Yes. Did you have occasion to send him to New York to see Mr. Wilson?

A I think so.

Q Did you see him more than once in that period before the Paris meeting?

A I don't know. Anyway once he was there.

Q What was the purpose he was going?

1291 A To explain to Mr. Charles Wilson the situation, the legal situation, the situation of the lawsuit and to confirm that there was no skeleton in the cellar and that he could in all good faith take over this trusteeship.

Q And Mr. Schmitz came over to see you several times in the course of the spring prior to Paris?

A I don't know. I think he came once or twice to report about progress.

Q Did he say that he had persuaded Mr. Wilson, or did he say that he had persuaded him to come to Paris?

A Yes, he said Mr. Wilson was willing to come at the first opportunity to Europe.

Q Did he draw up a draft of a resolution for the Board of Interhandel to enact?

A We didn't submit any draft to the Board of Interhandel because we were not at all sure at this moment if Mr. Charles Wilson would accept the trusteeship. All these were preliminary talks.

Q But the question that you were concerned with at that time was whether or not the terms might be acceptable to Mr. Charles Wilson, wasn't that true?

A Yes.

Q I show you Plaintiff's Exhibits 34 and 35 and ask you if you recognize them?

A Yes, that was the first draft.

Q You remember there was a draft then?

1292 A There was a draft, but this was just all preliminary and not binding.

Q Yes, preliminary?

A Yes.

Q Was that drawn up in your office?

A Anyway in the offices of the bank.

Q Did you review it?

A I certainly saw it. It couldn't have been otherwise.

Q Did you suggest any changes in it?

A No, I don't remember. Probably not. It was Dr. Wehrli and our officers, and Dr. Ulrich Wehrli treated the details of the talks on that.

Q Did you seek the opinion of counsel on the matter?

A I don't think so.

Q You are a lawyer yourself?

A Yes.

Q And Dr. Ulrich Wehrli is a lawyer?

A Too.

Q You didn't think that was necessary, is that it?

A No.

Q So in effect it was reviewed by two lawyers?

A Yes.

Q I see. Did Mr. Schmitz return to Zürich before the Paris meeting?

A I don't remember. I think that he did.

1293 Q Did he then work with you and Dr. Wehli further about the resolutions?

A Well, I think the draft was more or less already accepted and we only had to wait until the meeting in Paris with Mr. Wilson was possible.

Q Was there a meeting of the Board of Interhandel prior to the Paris meeting?

A No, there was just -- I informed the Board that there would be a possibility, but that we would have to make sure and talk first with Mr. Wilson. There was no decision passed at the Board. It would have been premature.

Q When were these resolutions passed then?

A Pardon me?

Q When were these resolutions adopted by the Board of Interhandel?

A After the meeting in Paris.

Q You mean, then, Dr. Schaefer, that these resolutions were not -- do you remember what date the meeting was held in Paris?

A It was in April. I don't remember the exact date.

Q Would April 30th be correct?

A I think so.

Q I show you Plaintiff's Exhibit 47 and ask you if that is the resolutions actually adopted by the Board of Directors of Interhandel.

* * *

Q Was the resolution adopted on April 28th prior to the Paris meeting?

A This was not the Board of Interhandel. This was the Executive Committee who was informed about it.

Q The Executive Committee of the Board?

A Yes, these were the three bankers and the Chairman.

Q Did that have authority in the subject matter?

A No, that was only preparing the documentation and the questions which came before the Board. We felt that we could inform the Board only after having met Mr. Wilson, but this was more or less the basis of which we agreed to hand over this trusteeship.

Q When you met Mr. Wilson in Paris, did you tell them that Interhandel was offering him these powers?

A Yes, that we would be glad to have him as trustee.

1295 Q You didn't say that you would have to consult your Board to find out whether or not they would authorize it?

A Because if the Executive Committee already agreed, we were almost sure to get the approval of the Board.

Q They were a rubber stamp for the Executive Committee, in effect?

A Not, but anyway it was a small board, and we knew they would certainly be glad to try this possibility of an issue out of a difficult lawsuit.

Q In any event, this resolution and the powers pursuant to it, the power of attorney were approved on April 28th?

A By the Executive Committee.

Q By the Executive Committee of the Board?

A Yes.

Q Did the Board meet thereafter?

A Afterwards the Board met.

Q When was that?

A I have no idea. Immediately afterwards. I referred to the Board about the meeting in Paris and they adopted the power of trustee which was agreed on.

Q In the identical terms with that approved by the ---

A I think so.

Q Who prepared that, those minutes and the resolution?

A I think they were prepared by Dr. Ulrich Wehrli in collaboration with Mr. Schmitz or with Mr. Wilson, because we certainly were of the opinion that Mr. Wilson had seen it.

1296

Q As a matter of fact, don't you know Robert Schmitz prepared them?

A Could be, I don't know.

Q Who constitute the Executive Committee of the Board?

A The three bankers on the Board and the Chairman.

Q Was that a regular meeting at which ---

A No, that was a regular meeting for that in order to have more or less the authority of the Executive Committee before the Paris meeting.

Q How big is the Board of Interhandel?

A There were, I think, four other persons outside of the Executive Committee?

Q You were empowered, then, by the Executive Committee to negotiate with Mr. Charles Wilson?

A Yes.

Q And you advised him of that when you saw him?

A Yes.

Q Now there had been a visit by Mr. Green to your office sometime prior to this, is that not correct?

A Could be, but it was insignificant. Nothing to do with the question. This was a representative of a committee of shareholders, I think.

Q Of General Aniline and Film or Interhandel?

A Yes, but he had no power.

Q Now you say this had no relation to the trusteeship. Don't you remember discussing this Green situation with Mr. Schmitz when he was in Zürich prior to the Paris meeting?

A No.

1297

Q I show you Plaintiff's Exhibit 46 and ask you if you have seen the original of that before.

A Could be. Mr. Schmitz wrote us so many letters that certainly this could have been one of them.

Q Would you look at paragraph 15 of it and read that?

A Well, ---

Q Would you read that aloud to the Court?

A "Your letter draft to Green, although much better than the first draft, and not only in your own best interest, needs further refining to preserve Interhandel's integrity and privilege to consider all its destiny on its own. But as it is now, is not acceptable as an indication of Interhandel's integrity, from my side."

Q Does that suggest to you that you submitted a draft of the letter to David Green to Mr. Schmitz for his approval?

A Could be, I don't remember.

Q And that there were several drafts of that?

A I don't remember. I considered the intervention of the Green Committee as not important now.

Q Wasn't it suggested to you that Mr. Wilson expected to have full powers and if anyone else was inferring that ---

1298

A Certainly.

Q --- that he would not act?

A Certainly.

Q So you considered it necessary to advise him that you

were paying no attention to the Green people, is that correct?

A I don't remember, I think so.

Q I show you Plaintiff's 49, which purports to be a letter to Mr. Wilson from you, dated April 20, 1960, and ask you if you signed that letter?

A Yes, I did. (Reads document.)

Q What was the purpose of that letter?

A I can't remember.

Q Maybe if you glance through it, it might help.

A Yes, there was a shareholders committee of General Aniline and Film Corporation.

Q Did you assure Mr. Wilson that no formal talks or commitments of any kind had been made to them?

A Yes.

Q And did you consider it was necessary to advise him of this in order to persuade him to act on your behalf?

A Yes.

Q You were exceedingly anxious to have him act on your behalf, weren't you?

A Certainly.

1299 Q You would do almost anything that Robert Schmitz suggested in order to persuade him to do it, isn't that true?

A Well, he was persuaded to do it in our Paris meeting. At our Paris meeting he was persuaded to accept our trusteeship.

Q Coming to the Paris meeting, which I believe was April 30, 1960, can you tell me who was there at the meeting and where it was held?

A At the Hotel Royal Moncea.

Q Who was present at the meeting?

A Mr. Charles Wilson, Mr. Spofford, his lawyer he brought with him, Mr. Schmitz from our side, Dr. Ulrich Wehrli. I don't remember if Dr. Edmond Wehrli was present, a lawyer acting for us in Zürich. Anyway, myself I was present and I don't know if Mr. Saager was present.

Q Do you remember what period of time that meeting covered, how long it took?

A I think we had a talk in the morning and then we had lunch together and then I had to go to Italy and I think Mr. Wilson had to go away, too. I think we had a talk of about two or three hours and we talked naturally about the whole question also during the lunch.

Q Did you explain the whole situation to Mr. Wilson?

A Yes.

Q What did you say by way of explanation?

A Well, I told him that since ten years there was a lawsuit, that we felt absolutely in our right, but that there was no progress, that we had to face years of procedure and that naturally if he would get it back through his action, we would be very grateful and feel very glad and that we were

ready to confer to him this trusteeship.

Q What did you want him to do for you?

A Also Mr. Schmitz asked Mr. Wilson, said there cannot be the question of a settlement or an arrangement. You must get it back. We fight for truth and we fight for right and we fight for the honor and the understanding between two friendly nations.

Q I am asking you what you said, Doctor?

A (No response.)

Q What did you say at the meeting?

A That we are very glad if he could act on this principle.

Q Was there any discussion of the enemy taint possibility?

A Yes, I had to explain that we were convinced that there was no question of enemy taint. That was the first thing he asked.

Q That was his primary concern, was it not?

A Yes, sir.

Q Had you ever had any offer from the United States Government for settlement of this case?

1299-B

A No.

Q Had you made any offer of settlement prior to this?

A No, we tried to get to talks, but as I told you, it was not successful.

Q Did you tell him what sort of a settlement would be satisfactory to Interhandel?

A Well, I had to tell him that because he and Mr. Schmitz said you must get General Aniline back ---

Q He said it?

A He said it.

Q He said you must get it back?

A Yes.

Q Were they trying to persuade you that you must take that attitude?

A Naturally, yes, and I did it gladly.

Q That was your attitude anyhow?

A Anyhow.

Q You thought a matter of principle was involved here, did you not?

A He insisted especially on the matter of principle. We were already a little bit skeptic because we were afraid the lawsuit not only would be costly, but could become, eventually, difficult for us.

Q But were you asking him to enter into some kind of a settlement of the matter short of the full return of General Aniline?

A No, no. He said it is a question of principle. You must get back General Aniline.

Q Did you agree it was a question of principle?

A. Oh, certainly.

Q. Why was it a question of principle in your estimation?

A. Because our position was naturally that we should be entitled to get it back. Only the lawsuit was in a formerly not very good position. Therefore, if he, for instance, would have said, "I am for settlement on this and this basis," we would certainly have discussed it with him. But he and Mr. Schmitz always talked and insisted on the question of principle.

Q. You agreed with them?

A. Also yes, gladly.

Q. Since the principle was the important thing, the money was less important?

A. If he would have gotten General Aniline -- the question of money would naturally have been completely different from -- compared to a settlement on a percentage basis.

Q. No. But what I am trying to get from you, Doctor, is that you considered this a source of aggravation between the two countries of Switzerland and the United States and it was extremely important in your view to have the matter disposed of to remove that source of aggravation?

A. Yes, sir.

Q. Were you willing to pay out money in order to effect that result?

A The question was not raised because the two gentlemen said you must get the whole thing back. But then I said if we get back General Aniline it goes without saying that the question, which I was not informed about in detail, of an eventual hurt of the personal position of Mr. Schmitz' father could be settled if there would be a claim against General Aniline and if we get back General Aniline and anyway we would certainly be in a much better situation if we have it back than if we would have to fight for years.

Q Mr. Spofford was there and you met him for the first time?

A I met him the first time.

Q But you knew prior to that that Mr. Wilson would want to be represented by counsel?

A Yes.

1301 Q And you agreed to that?

A Yes.

Q And you considered that a good idea?

A Yes.

Q What, precisely did you contemplate Mr. Wilson would do? What action did you expect him to take?

A He was completely independent, he could do what he liked but we thought that he being, or having been an influential member of the Government that he could persuade the Govern-

ment to end this lawsuit. We just trusted him and didn't at all talk about details of his action.

Q For that purpose you wanted to give him the fullest possible power, is that correct?

A Yes.

MR. O'DONOGHUE: I show you Plaintiff's Exhibit 48, and ask you if that is the copy of the powers you offered him?

A (Reading exhibit) Yes.

Q And those were in the fullest possible terms that you could, I imagine, were they not?

A Yes.

Q They were irrevocable?

A They were irrevocable but already in Paris Mr. Wilson told me, if ever you would want to get the freedom back you have only to tell me.

1302

Q So, if you asked for a termination of them he said he would be willing to go through with it?

* * *

A Yes.

MR. WILSON: Go through with what?

THE COURT: I understood, the termination, he would be willing to go through with the termination if Mr. Wilson --

* * *

Q Was there any discussion about my restriction of those powers?

1303

A I don't think so, no.

Q I will show you Plaintiff's 132 and ask you if you remember that?

A (Witness reading) Yes, I remember.

Q What is that, what was the purpose of it?

A The purpose was that on one hand the trustee would try to get back on a voluntary agreement, General Aniline and further, our eminent lawyer, Mr. John Wilson, had to continue the lawsuit on our behalf.

And the second reason was if we get back General Aniline, General Aniline would be sold only with our agreement, considering the price and circumstances of a sale.

Q So, when you were at Paris, it occurred to you that it might be well to have this restriction of the powers?

A Yes.

Q Was any other restriction ever placed in those powers?

A I don't think so.

Q So with this letter and the powers we have the full story of the authorization of Mr. Charles Wilson; is that correct?

A Outside of this verbal agreement that if ever we would feel that he should resign as trustee he would always be willing. It was more or less considered as a gentlemen's agreement.

1304

Q But it would be on his resignation not your request?

A That's right.

Q You had no right to fire him, as it were?

A No, but we had the right to ask him, please resign.

Q Did Mr. Wilson accept the powers at that time?

A Yes.

Q He did?

A He said on principle, he personally would be willing to accept it, but that he had to contact certain of his friends in the United States, especially in Washington, and that he would give us a definite answer afterwards, but personally, he thought that he would accept it.

Q But he did not in fact accept it at that time?

A No.

Q Returning just a moment to the resolution and the powers granted by the Board of Interhandel, was that transaction in English?

A The draft of the agreement was in English and it was submitted in English to the Board and accepted by the Board.

Q Is that the only instance that the Board has ever passed a resolution in English?

A Well, the Board had naturally to take into consideration a lot of documents which came from our lawyer, from other interested persons. They were all written in English and they circulated or were read in front of the Board because every-

body on the Board understood English.

Q I am talking about resolutions of the Board -- were they in English?

A No, the resolutions were made in German.

Q Except in this instance they were in English?

A No. The resolution itself was in German, but it meant we accept this power or this trustee agreement with Mr. Charles Wilson and this agreement was written in English.

Q And you adopted it?

A We adopted it.

Q Without translating it into German?

A Oh! No. No.

Q When did you next hear from Mr. Wilson?

A Well, that was when he formally accepted the trusteeship.

Q Did you have any communication with Robert Schmitz prior to his acceptance?

A I don't remember.

Q Did you send Dr. Wehrli over to this country again to discuss the matters?

A I think so but I don't remember the exact date.

Q And do you remember that Colonel Townsend was coming to Europe and you asked Dr. Wehrli to get in touch with Robert Schmitz by cable to determine whether or not you should receive him?

A Could be but he never asked us if he could come or never asked for an interview, never.

Q You didn't ask him for one either when you heard he was coming?

A We already considered that the job of the trustee because we were fairly sure that Mr. Wilson would accept the trusteeship.

Q In other words the job was entirely turned over to the trustee?

A Yes.

Q Of dealing with Colonel Townsend?

A Anyone else.

Q And that you were not going to do anything of that sort?

A No.

Q Now, Mr. Wilson ultimately accepted I believe on May 23rd?

A I think so.

Q Was there any request on your part to Robert Schmitz initially and to Mr. Wilson and Mr. Spofford that all this power be kept secret for the time being?

1307 A We had immediately to publish it that we had handed over the power of this trusteeship, therefore we didn't consider this secret any more at the moment he accepted the trusteeship.

Q Up until he accepted the trusteeship?

A Yes -- to keep it confidential.

Q Did you ask them not to tell John Wilson?

A No; I said I would inform Mr. John Wilson.

Q Did you inform Mr. John Wilson of this negotiation while it was pending?

A I think I informed him when he was in Hot Springs or Palm Springs by telephone telling him that we had this intention, and he fully agreed.

Q Was that after the acceptance?

A I don't remember.

Q You didn't tell him anything about it from October 26 until Paris, did you?

A Oh, no, because we were not at all sure if this would happen.

Q And you weren't sure it would happen until his actual acceptance on May 23rd?

A Yes, and we wouldn't mix up the responsibilities, Mr. John Wilson was responsible for the lawsuit and we tried to avoid any confusion -- he was not in charge of settlement or transaction. He was in charge of the lawsuit.

1308

MR. O'DONOGHUE: May I have Plaintiff's Exhibit 56, please?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's 56, Dr. Schaefer, and ask you if you can tell us what that is?

A (Witness reading) Yes, of course. I was asking if we could publish the name of the personality, the trustee, publicly.

Q By the way, speaking of publishing the name of the personality, in your correspondence with Mr. Schmitz during the period of negotiation from October of '59 to the Paris meeting, you never referred to Mr. Wilson by name, did you?

A I don't remember.

Q You would speak of him as "the personality?"

A The personality in question, yes.

Q That's how you would refer to him. Does this refresh your recollection about when you notified John Wilson?

A Well -- most probably at that date.

(Telegram read)

"Will phone John Wilson tomorrow...."

I don't remember the exact date I informed Mr. John Wilson. He must have it in his files.

1309

Q May 28, 1960.

A I don't know.

Q Were you in contact with Mr. Wilson during this period from October 20 to May of '60?

A With Mr. John Wilson?

Q Mr. John Wilson.

A Certainly, we were always in contact but only about the lawsuit, the procedure.

Q You considered this none of his business, is that it?

A Certainly it was his business to be immediately informed if something really happened.

Q You never got in touch with him during this period to find out whether he knew Robert Schmitz?

A No.

Q Or to find out whether he knew Charles Wilson?

A No.

Q Or to find out whether or not he considered Charles Wilson to have influence with the Government?

A We were sure that he knew this personality like Charles Wilson as we did, that he would certainly be in agreement.

Q Had Robert Schmitz told you he knew John Wilson?

A I don't remember. I think so, I don't know.

1310

Q But you didn't think it advisable to consult John Wilson about what he knew about Robert Schmitz, did you?

A No. I considered Robert Schmitz just as the go-between between the trustee and ourselves.

Q You considered him as the one person that might be

able to persuade Charles Wilson to accept this trusteeship; isn't that true?

A I don't think that he convinced or influenced a personality like Charles Wilson. He just brought this name, this personality, and we were naturally happy to pursue this idea.

Q You didn't think you were able to persuade him by yourself without Robert Schmits' assistance, did you?

A Well, certainly in Paris I had to convince him that there was no danger, that there was nothing really German tainted in our case. That I had to do.

Q It was Robert Schmitz that got him to Paris; isn't that true?

A Oh, yes, probably.

Q I believe I asked you if you knew whether Dr. Wehrli came to this country during that period between April 30 and May 23?

A I don't remember.

Q Did he come at your instance?

A Probably he was a contact man during this time, I could not follow every detail of this. I have other things to do.

Q Did you authorize him to correspond with Robert Schmitz about all this?

A Yes, yes, about all the details.

Q About all the details and he was handling all the details over here was he, for you?

A He was, but naturally he had to refer to the Interhandel Board or to myself.

Q But I mean Robert Schmitz was your man on this end to deal with Mr. Wilson and Mr. Spofford?

A I don't think so. I think Mr. Wilson had to make up his mind if he would accept or not.

Q I am talking about after the acceptance then.

A After the acceptance I don't know what was the role of Mr. Schmitz toward Mr. Wilson. I only know that Mr. Wilson had especially Mr. Spofford to help him, materially and formally, and as I said, Mr. Schmitz was a go-between and his role was more or less fulfilled with the acceptance of the trusteeship by Mr. Charles Wilson.

Q Did you ask him to do anything after that time?

1312

A I don't think so. He was more or less a confidential secretary in this thing of Mr. Charles Wilson, who asked us also to pay expenses and give a certain fee to Mr. Robert Schmitz, as naturally also to pay the expenses and the fee of Mr. Spofford.

Q I show you Plaintiff's 66, and ask you if you remember that letter?

A (Reading exhibit) Yes.

Q What reference did you make to Mr. John Wilson in there?

Is that a correct translation, by the way?

A Mr. John Wilson of course and I --

THE COURT: I can't hear you.

THE WITNESS: "Mr. John Wilson is of course entitled to the largest deference from 'Interhandel', and as a consequence, we should disregard a certain weariness, and go easy on him and in a friendly manner. He is the only one who knows the entire developed legal procedures to their foundation, and we could well come into the greatest confusion, should we no longer be able to count on him."

BY MR. O'DONOGHUE:

Q You suggested "we." Who do you mean by "we?" go easy on him?

A "We" -- that means Interhandel and the persons
1313 interested in Interhandel.

MR. O'DONOGHUE: Excuse me a minute, Your Honor.

BY MR. O'DONOGHUE:

Q Wasn't it your idea that Mr. Schmitz should put his knowledge of Interhandel and GAF at the disposal of Mr. Spoford and Mr. Wilson? Mr. Charles Wilson, that is?

A We considered that up to Mr. Charles Wilson and to

Mr. Spofford.

Q Beg pardon?

A We considered this question was up to the trustee and Mr. Spofford.

Q You mean if they wanted it --

A Yes, sir.

Q -- they could ask for it?

A I don't know, I think so.

Q Did you ask him to do anything in that respect?

A No.

Q Did you ask him to make reports to you from time to time?

A Well, he reported from time to time.

Q And didn't you ask him to make reports?

A It was more or less understood, he being practically the private secretary of Mr. Charles Wilson in this business.

1314 Q Did you cable him from time to time asking him to send reports of progress?

A Yes, because we were impatient to know if progress was made and we didn't get a report about tangible developments.

Q Well, as early as August you were asking him to "rush letter with information" were you not?

* * *

I show you Plaintiff's Exhibit 67. Is that a telegram from you to Mr. Schmitz asking him to get you information?

THE WITNESS: Yes, yes.

BY MR. O'DONOGHUE:

Q Hadn't you asked him to continue to do that?

A No, but we thought that it would be kinder toward Mr. Charles Wilson that we wished to have these reports from Mr. Schmitz as the go-between.

Q Well now, during the course of, let's say, the summer of 1960, you carried on a rather extensive correspondence with Mr. Schmitz, did you not?

A Yes.

Q And he reported to you and you said you welcomed those reports?

1315 A Yes. But unfortunately, nothing happened.

Q Did you expect something to happen immediately?

A No, but the whole year of '60 went by --

Q I am talking about the summer of '60. No year of '60 had gone by then, had it?

A Well, we never got any tangible results.

Q Did you complain in the summer of '60 about the lack of tangible results?

A Could be, not yet in summer but during the end of the year an especially at the beginning of '61 when the general assembly meeting approached because we knew that the shareholders would certainly wish to have results about this trustee's actions.

Q You were advised by Mr. Spofford of his activities, were you not?

A Oh, yes.

Q And you approved of his activities?

A Certainly.

Q And you thought that was the best way to go about the matter, did you not?

A Well, in the beginning of '61 --

Q Let's talk about '60 now.

1316 A Yes. He made a report but the report was just about what everybody knew. This memorandum of Mr. Spofford -- and we waited then for results, very patiently. During the summer of '60.

Q How soon did you expect to get a final result in this matter from the trusteeship?

A We thought about one year would be justified for waiting, and then we should perhaps get results.

Q Well now you knew that there was an election in the United States in the Fall of 1960, did you not?

A Yes.

Q And you knew that a new Administration was coming in, didn't you?

A Yes.

Q And you knew that there was a new Attorney General

and a new staff in the Department of Justice?

A Yes, but at this time we are talking about the new Administration was not yet in.

Q But you were entirely satisfied with what they were doing in 1960, from the first part of June, after all, until the end of the year, were you not?

A Yes.

Q And you had no complaints about the progress?

A Well, because we didn't see tangible progress.

1317 Q I say, you had no complaints about it?

A We didn't complain because this was the wait in time we certainly had to grant to the trustee. Therefore, we didn't complain at all.

MR. O'DONOGHUE: Let me have Plaintiff's Exhibit 76.

BY MR. O'DONOGHUE:

Q Do you remember saying in a letter to Mr. Schmitz of September 22, "We take into account throughout, that it will probably be impossible to move the American Administration before elections to a concrete talk covering a sensible solution." Do you remember that?

A Yes, certainly.

Q In other words, you didn't expect anything concrete to be accomplished until after the elections, did you?

A No.

Q I beg your pardon?

A No, we didn't.

Q When the elections were over, the Democrats had won, had they not?

A Yes.

Q Kennedy was elected, John F. Kennedy?

A Yes.

1318 Q And then you advised that you didn't think it would be possible to do more before the new Administration came in?

A Yes.

Q And there was a difficulty during this period of change?

A Certainly.

Q Now, do you remember that early in December of 1960, Mr. Charles Wilson offered to come to Zurich to talk to you about a possible settlement of the case?

A No, I don't remember.

Q You don't remember that?

A No.

Q You don't remember that Dr. Wehrli was sent over here then to discuss it with him?

A That could be but I don't remember.

Q Did he report to you on that?

A Probably he did.

Q And you don't remember anything about it?

A What should have been the settlement?

Q On the basis of 75 percent to the Swiss and 25 --

A Definitely not.

Q You don't remember that?

A It was never mentioned to me. I would have jumped
1312 at the opportunity.

Q Did you instruct Dr. Wehrli that you would not accept anything less than the full amount?

A No, I don't think so.

Q You don't remember that. Did you ever give Mr. Wilson or Mr. Spofford any instructions other than to try to get back the full batch of GAF stock?

A Well, we couldn't give them instructions without they have full power. The trustee was absolutely entitled to make transactions on its own, but it was always understood that the principal was to get back General Aniline in its entirety.

Q And that's the only authorization you gave to them?

A If they would have come or if Mr. Charles Wilson would have come and said, I can settle at 75 percent for you, I think we would have immediately accepted an offer like that.

Q But you don't remember that it was ever made?

A It was certainly never made. I would have had to inform the Board about that.

Q Well, you don't remember anything about Dr. Wehrli

coming here in December of 1960?

A No.

Q Did you send him?

A No, I don't think so.

1320

Q How about Mr. Burdich, do you remember his coming here in December?

A Oh, yes, he had other business to do.

Q Did you ask him to confer with Mr. Wilson?

A No -- he probably would have seen him but he reported back that nothing tangible has happened.

Q Wasn't it, following his visit that Dr. Wehrli was sent?

A I don't remember. It could be.

* * *

MR. O'DONOGHUE: Give me Plaintiff's 74, please.

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you Plaintiff's Exhibit 72, which is a letter from Dr. Wehrli to Robert Schmitz, dated September 6, 1960. Were you in consultation with Dr. Wehrli while he was carrying on this correspondence?

1321

A Yes, he certainly reported every time when he had a contact or discussion.

Q Will you read the third paragraph of this aloud and tell us whether that reflected your sentiment at that time?

A "It's entirely clear from this -- clear for me that

the well planned procedure requires much time but I am convinced that it's much more useful to have a good plan and to take into consideration all eventualities than to take steps only in view of the present situation in the very near future."

Q Did that reflect your view?

A Certainly, at this time, September.

Q September 6th.

MR. O'DONOGHUE: May I have Plaintiff's Exhibit 80.

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you Plaintiff's Exhibit Number 80, a letter from you to Robert Schmitz dated November 14, 1960; in that do you not ask him for an evaluation of the present situation?

A Yes, I did.

Q That was just after the election, if you remember?

A Yes.

Q And you wanted to hear reports from him as to his views on the matter?

A Yes.

1322

Q It also says there, "It will be probably somewhat questionable whether Mr. Charles Wilson will find the same friendly ear with the coming top rank of the Administration as was the case until now?"

A Yes.

Q Who suggested that to you?

A We thought immediately that the situation was probably a little bit changed.

Q Did anyone say that to you, did Mr. John Wilson suggest it to you?

A No.

Q You knew that Mr. Charles Wilson had been in two Democratic Administrations here, did you not?

A Yes.

Q Would you not have expected him to get the same friendly ear that he had from the Republican Administration?

A Well, we felt a little bit uncertain and wished to have his advice.

Q Mr. Schmitz' views?

A No, Mr. Wilson's views.

Q This letter was to -- you wanted him to get their views?

A Yes.

Q Did he do that for you? Did Mr. Schmitz do that?

1323

A I think so, I don't know.

Q Now I show you a letter from you to Mr. Schmitz dated November 24, 1960, in which you thanked him for his informative dispatches of the 23rd, --

MR. WILSON: The number of the exhibit?

MR. O'DONOGHUE: Number 85.

BY MR. O'DONOGHUE:

Q -- and the 24th of November as well as his telephone call?

A Yes.

Q Do you know what conference he was referring to there?

A Probably a conference with the new Government, with the new Attorney General. I didn't know.

Q You did not know what it was?

A No.

Q Did you know they had scheduled a meeting with the out-going Attorney General at that time?

A I don't know.

Q I show you Plaintiff's Exhibit 87, which is a letter from you, is it not, dated December 1, 1960 --

A Yes.

Q -- to Mr. Schmitz. What do you tell him in that letter?

A That I would wait for news about this conversation.

1324

Q And you thanked him also for his letter of the 24th, did you not?

A Yes.

Q "The comprehensive report" -- is that how you characterized it?

A Could be.

Q Is that how you regarded it?

A Certainly. We had no information at all about the conference, the talks with the Government.

Q Beg your pardon?

A We didn't get any tangible report at this time.

Q That was because the conference had not yet occurred, is that not true?

A Yes.

MR. O'DONOGHUE: May I have Plaintiff's 92?

BY MR. O'DONOGHUE:

Q Mr. Schaefer, I show you Plaintiff's Exhibit 92, a letter from you, December 8, to Robert Schmitz. Did you ask him there for further report of progress?

A Yes, I asked him to give me detailed information and not only state in general remarks about the possibilities.

Q Where do you say that?

A "That I promised the support of Interhandel's Board

1325 to give them concrete and positive information," and that we waited for this and I tell him at the end of the letter that I would be very glad before the Board meeting if I could tell the Board meeting about what happened and what is possible.

Q And did you receive that from him -- a report?

A I don't think so. It could be that we got the report but not the results.

Q Beg your pardon?

A It could be we got the report, but anyway, not the results of any propositions.

MR. O'DONOGHUE: May I have 96, please?

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit 96, Doctor, which is a letter to you from Mr. Schmitz dated December 23. What does that letter say?

A I thank him for his letter and for his comments, wise information, or additional information to the report we got from Dr. Wehrli.

Q Do you call it a detailed letter?

A A "detailed" letter?

Q Is that what you wanted from him?

A No. We would have liked to have the information, what would be possible and it stated as always in generalities.

1326

Q Did you suggest any criticism --

A No.

Q -- of what he was reporting?

A No. We were very patient. We waited.

Q You thanked him for what he was reporting but you wanted something else; is that what I am to understand?

A Yes.

Q Why didn't you tell him that?

A Because we waited. We thought it would be forthcoming perhaps later.

Q During this period of the change of Administration, you urged the trustee to wait, did you not?

A Yes.

Q And not to try to do anything until the new Administration came in?

A Yes.

Q And did you know that the new Administration came in on January 20 of 1961?

A Yes, I did.

Q Did you also want the trustee to wait until he could get a full evaluation of GAF?

A Yes.

Q And you knew he was working toward that?

1327

A I supposed so.

Q Didn't he tell you so?

A No.

Q You got no reports telling you about his conferences with Colonel Townsend?

A He told me that he continued his efforts but we waited until the Administration could really give him an answer.

MR. O'DONOGHUE: Will you mark this the plaintiff's next number?

* * *

THE DEPUTY CLERK: Plaintiff's Exhibit Number 183 marked for identification.

* * *

1322

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's 183 for identification, and ask you if you can tell us what that is, who is it from, who is it to?

A It's my letter. December 19th, addressed to Mr. Spofford, saying that I am very sorry that these contacts --

Q Never mind. I don't ask you to read it until I have offered it in evidence. But do you remember saying, "I believe that for the time being we shouldn't start any action?"

* * *

MR. O'DONOGHUE: All right, I will offer.

THE COURT: It will be received. You may now read from it.

* * *

BY MR. O'DONOGHUE:

Q "I believe for the time being we shouldn't start any action beside our insisting on an examination of the value of the

1329

company through the Morgan Guaranty people. I fully agree with the conclusion of the discussion that it's not advisable to make any proposition now. But I suggest also to abstain from any negotiations with regard to sale procedure, if any."

Do you remember that?

A Yes.

Q That was your urging them, Mr. Spofford and the trustee, to go ahead with their plan of having the GAF company evaluated; is that right?

A Yes.

Q Did they suggest it to you as a good idea before working out a settlement?

A Yes.

Q You accepted that?

A Yes.

Q And you knew that that would take time?

A Yes.

Q How long did you anticipate that that might take?

A No idea, but we thought notwithstanding the examination of the figures of General Aniline, we could proceed with the talks with the Government as soon as the new Government would be familiar with the case.

Q That's not what that letter says, is it?

A No, no. But that's my thought. But naturally we have to wait again. We were willing to wait.

Q Why didn't you tell them to proceed with negotiations
1330 rather than wait until evaluation had been made?

A That was up to the trustee. We could not influence him.

Q You told him that you agreed with the idea?

A Yes, certainly.

Q You felt that you were forbidden to make any suggestions to him about what to do or what not to do?

A No, we weren't, but we let it to his decision what he would think right.

Q Well, he then asked your opinion and you gave it?

A Yes.

Q You didn't say you agreed with him, did you?

A Certainly not.

Q Dr. Schaefer, did you continue to have correspondence with Mr. Schmitz, Mr. Wilson and Mr. Spofford during the early part of 1961, the first couple of months?

A Yes.

Q Did you at any time suggest that there was anything wrong with the procedure that they were following?

A No, but I suggested that perhaps it would be a good idea if I would come personally to Washington, talk with Mr. Spofford and the trustee, and see myself how the climate is.

Q Well, you didn't intend to do any negotiating?

1331

A No, no, but just to see how the situation stands.
I thought Mr. Spofford would more or less talk and negotiate.

Q And you wanted to talk with Mr. Spofford, did you?

A Yes, certainly.

Q Well now Mr. Spofford came to Zurich in March of 1961, didn't he?

A Yes.

Q You could talk with him then, couldn't you?

A Yes, I talked with him and he welcomed the idea that I could come to Washington.

Q Did he actually encourage you to come?

A He said yes, it could be a good idea, he could certainly introduce me to friends and to people who probably would be interested in this Interhandel case between the United States and Switzerland.

Q But you didn't intend that to interfere in any way with the trustee's procedure?

A Not at all.

Q You knew that he was working on a memorandum for the Administration, did you not?

A Yes.

MR. WILSON: Who is "he?"

1332

THE WITNESS: Mr. Spofford.

BY MR. O'DONOGHUE:

Q And he brought it to Zurich with him, did he not?

A Certainly.

Q And you went over it with him then?

A Not in March, in May.

Q Didn't you see the draft of it in March?

A Oh, yes.

Q Well, he went over it with you, did he not?

A He went over in May with me to Washington.

Q No, no. I am asking whether you reviewed the draft of his memorandum?

A No, we accepted this draft, this memorandum.

Q You accepted?

A And he then distributed it to certain gentlemen here in Washington in order to inform them about the situation.

Q Because he told you there was a new Assistant Attorney General in charge of this case who knew nothing about it?

A Yes.

Q And that he thought this was the best way to orient him; is that correct?

A That's correct.

Q And you agreed with that?

A Certainly.

Q And you knew that would take time, didn't you?

A Yes.

Q Because you knew this was a vastly complicated

matter which required a great deal of explanation, did you not?

A Yes.

Q Your purpose in coming here was simply to evaluate the situation?

A Yes.

Q And not to continue any negotiations?

A No.

Q Whom did you meet when you were here?

A I was accompanied by Mr. Spofford, and he introduced me to some gentlemen I knew before, some I didn't know. It was Senator Olin Johnston, whom I saw once in Switzerland, Mr. Allan Dulles, whom I knew from Switzerland. Mr. Averill Harriman. Senator Prescott Bush. Senator Hartke, and Senator Symington.

Q He introduced you to these various people?

A Yes.

Q And he accompanied you on your visits?

A Everywhere, he was always present.

1334 Q Was he present when you went to see Mr. Orrick?

A I think so, yes.

Q You sure of that?

A I am not sure of that.

Q Was Mr. John Wilson with you?

A No.

Q He was not?

A No, not at this moment.

Q He says he was.

A I don't even remember that we talked with Mr. Orrick.

Q You don't remember that you talked with Mr. Orrick?

A No, I don't think so.

Q Did you talk with anybody in the Department of Justice?

A I don't remember. I think -- they all said we are not yet familiar with the thing. We have to look into the matter, the whole question.

Q Do you remember meeting a Mr. Oehman?

A Oh, yes, certainly.

Q He was in the Department of Justice?

A Yes, but he was not informed and he said he couldn't talk about the question.

Q Did you ask him to make an appointment to see the
1335 Attorney General?

A No.

Q You did not?

A No.

Q You don't remember that he refused to make an appointment?

A Yes, it could very well be that I asked to see the Attorney General. I don't remember.

Q Do you remember meeting Mr. Orrick at that time?

A Vaguely, but I cannot be sure.

Q You don't remember being in his office?

A I think so, yes.

Q Do you remember giving him a lecture on the inequities of the American Government?

A Certainly not.

Q And do you remember his asking you to leave his office?

A Not at all.

Q You don't remember that?

A No.

Q That never occurred?

A No.

Q If he says so, that's wrong. You don't remember any
1336 disagreeable conversation with him?

A No.

Q What did you discuss?

A We just asked about the possibility to come to an agreement and to stop the law or interrupt the lawsuit.

Q Oh, you were negotiating with him then?

A No. It was Mr. Spofford who said the trustee was in charge and I said only that I would naturally gladly welcome an agreement.

Q Did you meet people in the Treasury Department when

A To Mr. Spofford from me.

MR. O'DONOGHUE: I offer it.

* * *

1336-C letter?

THE WITNESS: I don't remember. It could be.

BY MR. O'DONOGHUE:

Q It could be that you received such a letter?

A Oh, yes.

* * *

1336-D

THE COURT: You did receive it?

THE WITNESS: Yes.

THE COURT: The letter will be received in evidence.

* * *

1336-E

BY MR. O'DONOGHUE:

Q Do you remember, Dr. Schaefer, that Mr. Spofford reported to you that he had been in conference with Mr. Ockman, Mr. Orrick and Mr. Myron, and that memorandum of agreement was being looked toward, some kind of an agreed statement of facts?

A A statement of facts, yes, but not an agreement.

Q Mr. Spofford sent you a copy of that proposed memorandum of your meeting, did he not?

A Yes.

Q And asked for your comments?

A Yes, could be. Yes.

1337

DEPUTY CLERK: Plaintiff's Exhibit 185 marked for identification.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you what has been marked
Plaintiff's Exhibit 185 for identification---

* * *

BY MR. O'DONOGHUE:

Q Can you identify that letter, Dr. Schaefer?

A Yes, I can.

Q What is it?

A It's a letter to Mr. Spofford giving some
comments to his draft of a Memorandum which he intended to
submit to the gentlemen of the Attorney General's Office.

1338

Q The date of it is what?

A May 30th.

Q It is your letter?

A And it is in answer to letter of May 24th.

Q Those attachments to the exhibit, did you send them
to Mr. Spofford?

A Probably, certainly we did, probably --"that are
attached to this letter...." (Reading.) There are comments
by Mr. Ulrich Wehrli to that draft.

* * *

1340

MR. WILSON: I object to it because it was not
properly identified.

THE COURT: They will be received. They were
identified as having been attached to the letter offered
which has been offered in evidence.

MR. WILSON: Is that a fact?

THE WITNESS: The first is certainly our work.
The other, I don't know.

MR. WILSON: Then, I object if it has not been
identified.

* * *

THE WITNESS: It can be perhaps. I don't know.

BY MR. O'DONOGHUE:

Q You certainly received the draft on which you made
the comments?

A Yes; otherwise, we could not have written or
answered it.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, you continued to have correspondence
with Mr. Spofford, particularly during the months of June
and July of 1961, do you remember?

A Yes.

Q And do you remember that he was giving you
encouraging news?

A No.

Q You do not remember that?

A No.

DEPUTY CLERK: Plaintiff's Exhibit 186 marked for
identification. Plaintiff's Exhibit 187 marked for iden-
tification.

THE COURT: Do you have another exhibit?

THE CLERK: Yes, Plaintiff's Exhibit 188 marked for identification.

* * *

BY MR. O'DONOGHUE:

Q I show you, Dr. Schaefer, what has been marked Plaintiff's Exhibit 186 for identification and ask you if you can identify that.

A Yes.

Q What is it?

A 186.

Q Can you describe it, who it is from and to whom?

A From Mr. Spofford.

Q To whom?

A Myself.

Q What is the date?

A The date is the 17th of June 1961.

Q I show you Plaintiff's 187 for identification, and ask you if you can identify that.

A (Reading) 20th of June. Yes.

Q That is a letter from Mr. Spofford to you?

A From Mr. Spofford.

Q --dated June 20th.

THE COURT: Is that to Dr. Schaefer?

THE WITNESS: Yes, where he regrets the retirement of two representatives of the two other banks.

1343

BY MR. O'DONOGHUE:

Q Did you receive that?

A Yes.

Q Now, I show you Plaintiff's Exhibit 188 for identification and ask you if you can identify that.

A Yes.

Q What is that?

A That's a letter from me to Mr. Spofford dated June 23rd, 1961.

Q 1961.

A 1961.

MR. O'DONOGHUE: I offer these in evidence, your Honor.

THE COURT: Is there any objection?

MR. WILSON: No. I mean the witness has identified two of them. I have never seen.

* * *

1344 THE COURT: Without objection, they will be received in evidence.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, you state in your letter of June 23rd to Mr. Spofford, which is Exhibit 186, I guess:

"Many thanks for your letter of June 17th.

It really seems the position taken by Mr. Orrick is somewhat encouraging for settlement negotiations."

Do you remember saying that?

A I remember it, but I added, there was no optimism for it.

Q "I am entirely of your opinion that there is no reason for a too early optimism."

You were encouraged, but not---

A Not optimistic.

Q Did you urge Mr. Spofford not to hurry his negotiations at that period?

A I practically always insisted on continuing negotiations, but we thought negotiations for a settlement would be premature before having the Declaration of Principle of the Administration that they would be willing to give back the General Aniline, or to make an acceptable compromise.

Q Doesn't Mr. Spofford suggest that Mr. Orrick seems willing to do something of that kind?

1345 A Well, it was just general -- generalities that one could talk. But no proposal came and nothing was offered.

Q I am asking you whether or not you urged Mr. Spofford not to hurry his negotiations on account of the view of the stockholders of Interhandel at this time?

A I did.

Q You did urge him not to hurry?

A Not to hurry too much.

MR. O'DONOGHUE: I offer this for identification.

DEPUTY CLERK: Plaintiff's Exhibit 189 marked for identification.

* * *

BY MR. O'DONOGHUE:

Q I show you what has been marked for identification as Plaintiff's Exhibit 189 and ask you if you can tell us what that is.

A (Reading). Yes, a letter to Mr. Spofford dated June 27th.

Q From you?

A From me.

MR. O'DONOGHUE: I offer this.

MR. WILSON: No objection.

THE COURT: Without objection, it will be received.

* * *

1346

BY MR. O'DONOGHUE:

Q Do you remember saying in that letter, "It really looks like negotiations could be started on a more realistic basis than before"?

A Yes.

Q And that's because of the more realistic reports Mr. Spofford had given you?

A No.

Q What was the basis for that?

A It was for another reason: There was a friend

of ours, of the bank, a client of our bank, a lawyer in Zurich, who was at the same time though a lawyer, quite close to Prince Radziwill, the brother-in-law of the late President Kennedy.

At this time, I didn't see Prince Radziwill, but our lawyer friend told us that after the negotiations proceeding so slowly, and having broken down, that eventually he could urge his customer to get for me a personal introduction to the Attorney General, Mr. Robert Kennedy, and that he thought that only this would be a decisive new step.

Q Who said that?

A Our lawyer friend, Dr. Gutstein, in Zurich, Switzerland.

1347 Q When did you start that negotiation?

A That was not yet a negotiation, but it was the probability that I could perhaps be introduced to the Attorney General directly.

Q When did you meet with Mr. Gutstein?

A All the time. He is a good friend of ours, living in Zurich.

Q When did he make this suggestion?

A Probably in the month of June.

Q Was this letter intended by you to inform Mr. Spofford of that fact?

A As soon as possible, but I had no information yet

if I would be introduced, and I preferred to wait until I was sure if this could happen, and then inform him.

Q You did not want to tell him what negotiations you were carrying on?

A There was no negotiation yet. There was just the possibility of an introduction.

MR. O'DONOGHUE: Mark these the next numbers.

DEPUTY CLERK: Plaintiff's Exhibit 190 marked for identification. Plaintiff's Exhibits 191 and 192 marked for identification.

* * *

1348

MR. WILSON: (Examining exhibits) We have no objection.

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you what have been marked for identification as Plaintiff's Exhibits 190, 191 and 192 and ask you if you can identify each one of them by saying what it is, who it is to?

A One is a cable ^{from} Mr. Spofford: "Conference with Mr. Orrick encouraging. Cabling full report tonight."

Q What is the date on that?

A The date of that is June 28th, 1961.

Q Addressed to you?

A Addressed to me.

And there is a Night Letter or a cable addressed

to me, 28th of June, and reports about conference with and discussion with Mr. Orrick.

Q Then, the next letter?

A The next letter is a letter of the 30th of June to me where he confirms his cable of the 28th.

Q That's from Mr. Spofford to you?

A That's from Mr. Spofford to me.

Q Did you receive that letter?

A (Reading) Yes.

THE COURT: What's the exhibit number?

MR. O'DONOGHUE: 192.

1349

I believe Mr. Wilson has already said he has no objection to these.

THE COURT: Without objection, they will be received in evidence.

* * *

THE DEPUTY CLERK: Plaintiff's Exhibits 193 and 194 marked for identification.

* * *

MR. WILSON: No objection.

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you what has been marked Plaintiff's Exhibits for identification 193 and 194 and ask you if you can identify them.

A (Reading exhibits) Yes. That is to Mr. Spofford from me, letter dated July 4th, and another letter July 6th.

Q --also---

A --also from Mr. Spofford.

MR. O'DONOGHUE: I offer these, your Honor.

THE COURT: Without objection, they will be received.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, you said, in your letter of June 27th,
1350 "It really looks like negotiations could be started on
a more realistic basis than before." What did you expect
that to convey to Mr. Spofford by way of any meaning?

A That there would be another way to start negotiations.

Q Is there anything to suggest that there is another
way that you are talking about?

A Yes, I hoped eventually that this person---

Q No, no. I'm talking about the letter. What
did that say which would indicate that, anything?

A No. It was just my hope.

Q What were you doing, then, between June 27th, and
let's say July the 6th? Did you meet Prince Radziwill?

A Prince Radziwill came once for a quarter of an
hour to my office, and said that as a favor to his lawyer
friend, Dr. Gutstein, he would be willing to introduce me
to the Attorney General, but only if I could declare for him
solemnly that there was no German taint in this, and that

there was really the moral basis for a talk. Otherwise, he would not do it. I promised him that.

Q When did this meeting occur?

A I don't know. It must have been the first days of July, probably.

Q First days of July?

A Probably. I don't remember the exact date.

1351

Q Did you ever ask Mr. Wilson or Mr. Charles Wilson to arrange a meeting between you and the Attorney General?

A No. I told and I wrote Mr. Spofford afterwards that there---

Q No. I'm asking if at any time prior to this you had asked either one of them---

A No, because I didn't know if this introduction would take place.

Q I'm not asking you that. Did you ask either one of them to attempt to arrange a meeting between you and the Attorney General Robert Kennedy?

A Oh, a lot of times, but it was never possible.

Q Did you ever write them to that effect?

A No, but I talked with them.

Q When did you talk with them?

A Especially when I was in Washington.

Q When was that?

A In May, the end of May.

Q And that was of 1961?

A Yes.

Q And it was impossible to arrange a meeting at that time because of the Cuban difficulty?

A Probably. I don't know. But I was refused.

Q Who refused you?

A I don't know. I just heard that it was not possible.

1352

Q And did you ask them to arrange a meeting at any other time?

A Certainly, I asked Mr. Spofford if possibly he could see the Attorney General, or if he could make an appointment for me, but this was not possible.

Q When did you ask him this?

A When I was in Washington. And when afterwards it was useless, I said could you try afterwards because---

Q Now, you didn't see Mr. Spofford again after you saw him in New York and Washington?

A New York and Washington.

Q You didn't see him after that until---

A --until he came to Zurich.

Q That was in September 1961.

A 6th of September.

Q So, you hadn't talked to him during that time.

A Naturally, after my interviews in Washington,

I asked him, "Could you, Mr. Spofford, then, get to the Attorney General?"

Q And did you ask him after you went back to Zurich to---

A No.

Q You never wrote to him?

A No.

1353

Q Never telephoned him?

A No.

Q Never asked him if that could be done?

A I already did it.

Q Well, now, your purpose in coming here was not to negotiate, was it, in May of 1961?

A No -- to have information and to feel myself the atmosphere of the possibility of a settlement.

Q Was that your purpose in asking Prince Radziwill to make this appointment for you?

A No, because I was so disappointed and skeptic about this possibility; then came this offer of eventual introduction after my returning home from Washington.

Q In your letters to Mr. Spofford of July 4 and July 6, did you make any suggestion to him at all that you were attempting to have Prince Radziwill intervene on your behalf?

A No, because it was not yet sure that Prince

Radziwill would do it.

Q He came and you saw him in Zurich---

A Yes.

Q --before either of these two letters were written?

A Yes.

Q And he said he would do it, didn't he?

1354 A Yes, but he said he wasn't sure if he could get an appointment for me.

Q Is there any reason you did not tell Mr. Spofford that you were trying to get that interview?

A There was no particular reason, but as I was not sure, I did not wish to say that this would happen or could happen before I, personally, was sure.

Q This would not be the first time that you had duly authorized representatives, and went behind their back with other negotiations, would it?

A No, no, there was never behind-the-back of our negotiators' contacts.

Q It was behind the back of Mr. John Wilson, was it not, when you were negotiating with Mr. Charles Wilson and Robert Schmitz?

A No, not at all. Mr. John Wilson was not at all negotiating a settlement. He was handling our law suit.

Q Well, isn't negotiation often a part of a law suit?

A Could be; but he was our lawyer for the suit and

not the negotiations for a settlement.

Q And Mr. Spofford was your lawyer for negotiation of a settlement, isn't that true?

A He was not at all our lawyer. He was the lawyer of Mr. Wilson, Charles Wilson.

Q All right. Mr. Wilson had full authority, did he not?

1355 A Yes.

Q Did you think it appropriate to let him know or his lawyer know that you were attempting these other methods of getting somewhere?

A There was no methods of getting somewhere. There was a possibility of a talk with the Attorney General which nobody else could provide us with.

There was not yet a settlements talk, and as soon as I knew that I had this, or would have this interview, I informed about this new possibility Mr. Spofford. When he came to Zurich the 6th of September, I told him confidentially that there would be a possibility in the month of October probably to have an interview, a talk with the Attorney General. Immediately, I told him when I knew that this possibility would be forthcoming.

Q Did he ask you to use these means of attempting to reach a settlement?

A He was very impressed. He was before very skeptic

about his own negotiations, also negotiations of Charles Wilson. When I told him this possibility, he was very surprised, impressed, and said that -- he was very fair -- he said that he fully understood that the possibility of this kind should be used, that it would, anyway, be a very important interview; but that he would probably think, consider his mission as fulfilled or as liquidated.

1356 Q He told you that when he came to see you in Zurich, in September?

A Well, he made an allusion that this would eventually change his position, and that he would have to talk with Mr. Charles Wilson.

Q Had you communicated anything of this kind with Mr. Wilson who was your fully-authorized representative?

A Well, I conferred with his fully-authorized, legal adviser, Mr. Spofford, and knew that Mr. Spofford would immediately inform Mr. Charles Wilson.

Q And you made no attempt to tell him directly, however?

A No, no.

Q Your relations were with, as you told us just a moment ago, your arrangements were with Mr. Wilson, and Mr. Spofford was not your attorney?

A No; but Mr. Spofford acted--- He was a man who really was active, and since the meeting and our visits in

Washington the end of May, we were always in correspondence, and there was never a correspondence from Mr. Charles Wilson.

* * *

-1357

BY MR. O'DONOGHUE:

Q You had some discussion, or suggestion, to Mr. Spofford that he might represent you instead of Mr. Wilson, isn't that true?

A No. I told him that he was really very active, and that we would have to correspond and to talk directly, because from Mr. Charles Wilson we didn't hear in the last month anything at all.

Q That's because Mr. Spofford was carrying on the correspondence on his behalf, isn't that true?

A Yes.

* * *

BY MR. O'DONOGHUE:

Q Do you remember that you wrote to Mr. Spofford in May 30, 1961, saying:

"According to the power granted to Mr. Charles Wilson, it is mainly under his auspices that contacts with the U.S. Government take place. Perhaps we will later on have to discuss whether or not it would be advisable from a certain moment on to establish direct contacts between yourself and the company on a basis then to be fixed."

1358

Do you remember that?

A Most certainly.

Q Did you have any discussion with Mr. Spofford to that effect?

A Well, I had the discussions May in Washington and afterwards in ^{this} connection you just mentioned, and his visit to Zurich on the 6th of September when I informed him fully about what could eventually happen.

THE DEPUTY CLERK: Plaintiff's Exhibit 195 marked for identification.

MR. WILSON: No objection.

* * *

BY MR. O'DONOGHUE:

Q I show you, Dr. Schaefer, what has been marked Plaintiff's 195 for identification and ask you if you can identify that.

A (Reading exhibit) Yes.

Q What is that?

1359 A A letter from Mr. Spofford to me dated the 17th of July informing me that the new Ambassador to Switzerland has been informed, and would go to Bern in the next few weeks.

MR. O'DONOGHUE: I offer 195.

THE COURT: Without objection, it is received in evidence.

* * *

BY MR. O'DONOGHUE:

Q You had not informed Mr. Spofford by then that you were entering into new negotiations, had you?

A I wrote to him at the end of July or the second half of July that there was a new contact, or possibility of a new contact.

MR. O'DONOGHUE: May I have Defendant's 58, please?

BY MR. O'DONOGHUE:

Q I show you Defendant's Exhibit 58 which is a letter from you to Mr. Spofford dated July 21, 1961, and ask you if that is the first---

A Yes, that is---

Q ---the first time that you suggested to him that you were making some other contact?

A Yes.

THE COURT: What is the date on that?

MR. O'DONOGHUE: July 21.

BY MR. O'DONOGHUE:

Q You have no response by letter to that letter of yours of July 21, did you?

A No. Mr. Spofford informed us that he would soon come to Switzerland?

Q How did he inform you of that?

A Probably, either through Mr. Schmitz or Mr. Ulrich Wehrli.

Q You say, by letter to them?

A Oh, I don't remember. There were so many letters exchanged in correspondence. I don't remember if he wrote, but anyway he told me that he would be in Switzerland.

Q Isn't it a fact that he was able to tell you that by calling you from , down on the Riviera?

A Could be.

Q Do you remember that he called you from there?

A I don't remember clearly, no. I had a call or information from him, but I think we knew already that he would come to Europe before.

MR. WILSON: I missed the answer, but I don't think it makes any difference. Thank you, your Honor.

THE WITNESS: He told me already, when we were together in Washington sometime -- perhaps, probably he would come in Fall to Europe.

1361

BY MR. O'DONOGHUE:

Q Do you know whether he was away when your letter of July 21---

A No, I did not.

Q Did he tell you that?

A No. I don't remember.

Q Isn't it a fact that he was rather upset when he talked to you in Zurich about this new contact you were making?

A Well, he was very impressed that I was able to make this contact, and he was first very skeptic about the results of his own contacts. And then he said, "Well, this changes the whole situation. I have to talk with the Trustee and I don't know if I can continue."

Q In other words, he was quite upset at the idea?

A No. He was very fair, and he said, "This is probably the best or the most interesting and perhaps a decisive thing which could happen in this case."

Q Did you ever attempt to revoke the powers granted to Mr. Charles Wilson?

A Well, I wrote to him once this, if he would agree, that his power of Trustee could be revoked. That means -- I remembered him to this talk we had in Paris where he said, "Naturally, you are always free to revoke this power."

1362

Q I'm not asking you that. I'm asking you whether any resolution of the Board of Directors, or whatever you call them, of Interhandel, was ever passed revoking his powers?

A The Board talked about Mr. Charles Wilson's negotiations, and we were really all very skeptical; but I said, "I think it's better to wait. Perhaps there will be a result." But I remember by a letter -- I think it was March '61 -- to Mr. Charles Wilson, that we could always revoke, and he confirmed this with a letter of his own,

where he said, "Naturally, at any moment, you can revoke my power." I think that must have been in March, the end of March.

Q That was when you informed him that you were coming over to see the Attorney General the first time?

A No, no. I didn't know at all at this stage. No, no.

Q You talked about coming over to see the Attorney General in March of 1961, did you not?

A Well, I tried to get an appointment, but I was refused, and then came the trip the end of May to the United States.

Q Well, what provoked his letter to you in March of 1961 was your suggestion that you wanted to come over and see the Attorney General directly, is that not true?

1363 A Well, I wanted, but I did not get an appointment at all.

Q I'm not talking about that. You informed him, or he found out that you wanted to come to see the Attorney General personally, is that not true? In March of 1961, you told him that?

A No, no.

Q And that he then wrote a letter?

A I tried -- We always tried to get a contact with the Attorney General directly.

Q I show you Plaintiff's Exhibit 145, Dr. Schaefer. I'm sure you remember that. Is that the letter you are referring to?

A (Examining exhibit) Yes.

Q What provoked that letter, do you know?

A No.

Q It just came "out of the blue?"

A Unprovoked. But we thought, the Board of Interhandel, that after waiting 18 months, and having no results---

Q Eighteen months?

A Yes, since the talks in Paris -- to '61.

Q When was that?

A --about 12 months that nothing was forthcoming

. . .

1354 and that we should have the possibility to take back our frieden, our liberty of decision.

Q That's what I'm asking you: Was there something to Mr. Wilson that caused him to write this letter that you know of?

A No.

Q Nothing?

A Well, I don't know if I wrote to him before or if I asked Mr. Spofford that this should be done. But, anyway, this was for us a confirmation of a fact which was

already agreed upon in Paris.

Q You saw Mr. Spofford in Zurich in March of 1961?

THE COURT: Was that a question?

BY MR. O'DONOGHUE:

Q Did you not?

A I think so, yes.

Q And you were talking about seeing the Attorney General at that time, weren't you?

* * *

THE WITNESS: I was asked that I would come over to the United States, and with him, Charles Wilson, I would very much like to have the direct contacts with the author in order to see myself what the possibility for getting General Aniline really was.

BY MR. O'DONOGHUE:

Q When you saw Mr. Spofford in September of 1961, had an appointment been made for you at that time?

A Yes. He was even lunching at my home.

Q No, no. I'm sorry. I'm asking if an appointment to see the Attorney General had been made for you at that time?

A No.

Q Had you submitted any proposal to the Attorney General at that time?

A No.

Q When did you submit some proposal to the Attorney General?

A When I saw him, but that was not a proposal; it was just talk about generalities and the necessity or desirability of an agreement of settling the litigation.

MR. O'DONOGHUE: Will you mark these for me?

THE DEPUTY CLERK: Plaintiff's Exhibits 196 and 197 were marked for identification.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you what has been marked Plaintiff's Exhibits 196 and 197 for identification and ask you if you can tell us what they are.

* * *

1356

MR. WILSON: I have no objection to either one of these. They are both dated the same date, aren't they?

BY MR. O'DONOGHUE:

Q To go back, Dr. Schaefer, if you will identify those letters.

A Yes.

Q What are they?

A (Examining) Letters from me dated 9th of October '61 to Mr. Spofford.

Q Both of them are of the same date, isn't that right?

A Yes.

MR. O'DONOGHUE: I offer these, your Honor.

MR. WILSON: No objection.

THE COURT: Without objection, they will be received in evidence.

1367

BY MR. O'DONOGHUE:

Q You wrote to Mr. Spofford, then, on October 9th. Do you remember saying to him in one letter:

"The purpose of my visit to Washington will merely be to learn whether and on what basis the Justice Department would be interested in an arrangement."

A Yes.

Q Was that the purpose of your visit?

A Yes.

Q In a letter of the same date to Mr. Spofford, you say:

"The reason of my interview with the Attorney General, as I said before, is to find out why my proposal was rejected."

Had you submitted a proposal?

A No.

Q You had not submitted a proposal?

A No, not at all.

Q Well, what does that mean?

1368 A Perhaps Prince Radziwill told him that there could be a proposal. I don't know. We once talked with our lawyer friend, Gutstein, and said, we could eventually make out of General Aniline, selling the bank for help or credits to under-developed countries. It could be that this proposal was submitted, but rejected. That was not a written proposal; it was just a suggestion, which I never took quite seriously.

Q You authorized Prince Radziwill to submit a proposal for you?

A No, not at all.

Q Well, then, what do you mean, perhaps that was the proposal?

A Well, I talked to my lawyer friend, Dr. Gutstein, once. We could think of all possibilities if we would get back General Aniline. It could be that he talked about it, but the only result he got -- "You can have an interview with the Attorney General." But I never submitted, before I saw the Attorney General, a proposal.

Q Did you submit it at that time?

A Pardon me.

Q Did you submit a proposal at that time?

A No. I I wished to know if, on principle, the Attorney General would be willing to consider a

settlement on giving back of General Aniline.

Q Well, what was this European Development Bank?
Did you submit that offer?

A No.

Q Never did?

1366 A I did not. I talked with him afterwards of different possibilities, but he said: "You know, I'm sitting in the same glass house like you. My advisers in the Justice Department tell me that our legal position is a very strong one, that there is no need for a settlement, and all these different possibilities are, therefore, anyway, no good. We could consider a settlement only on other bases."

Q Dr. Schaefer, I show you Defendant's Exhibit 63, which is a letter to you from Mr. Spofford: First of all, about his cable to you about the appointment with the Attorney General, and then, there is a mention on page 2:

"However,^{if} it is confirmed that the Attorney General does not see in the European Development Bank the key to the settlement of the matter, I should hope you would be ready with one more alternative basis of suggestion."

Had you outlined the European Development Bank to Mr. Spofford?

A I told him about it.

Q What was this proposal?

A It was not a proposal. It was an idea.

Q What was the idea then?

A The idea was to get back General Aniline, to sell it, and with the proceeds, put up a European Development Bank for credits to under-developed countries.

.1370 Q Did you talk this over with Mr. Orrick?

A I don't think so. I didn't see Mr. Orrick -- I saw him only after my talk with the Attorney General.

Q Was he with you when you saw the Attorney General?

A In the afternoon when we were four gentlemen: Mr. White, actually at the Supreme Court; Mr. Orrick and two other gentlemen of the Justice Department. They were all very severe and very reluctant to talk settlement at all.

Q Was Mr. John Wilson with you when you went to see them?

A No, he was with me when I was in May in Washington, but at this time, I don't think that he was with me.

Q Was Mr. Spofford with you?

A No, I was alone.

Q You came directly to Washington that time, didn't you?

A Yes. I informed Mr. Wilson and Mr. Spofford since they knew I was in Washington, and the following day I met them in New York to inform them about my talk.

Q And what did you tell them about your talk?

A Everything, about what the Attorney General said, and that there was possibility for talks and negotiations, and Mr. Orrick had the instruction from the Attorney General to begin talks.

Q Well, now, Mr. Orrick had been talking with Mr. Spofford all along, had he not?

1371

A But without any result and without any negotiations.

Q But he had been talking with him all along, negotiating?

A Could be. I didn't know.

Q What?

A I didn't know what the talks between Mr. Spofford and Mr. Orrick were.

Q Didn't Mr. Spofford report to you in some---

A Yes, but only on general principles, that there could be talks or negotiations, but there was never a proposal.

Q And didn't you tell him in the middle of -- in your letter of August 24th, you asked him to refrain from exploring -- "in the meantime from exploring any tangible suggestions or solutions, old or new with the Justice Department?"

MR. WILSON: May we have the record show that August 24th is P-193 -- is that right?

MR. O'DONOGHUE: Yes.

BY MR. O'DONOGHUE:

Q Do you remember telling him that in August of 1961, August 24th?

MR. WILSON: You mean, writing him that.

MR. O'DONOGHUE: Writing him to that effect?

THE WITNESS: Yes.

BY MR. O'DONOGHUE:

Q You didn't want him to negotiate any further.

A No, because I thought, first I would like to have this talk with the Attorney General; there we would see how the situation stands; otherwise, how the situation could be prejudiced.

Q After you talked with the Attorney General, and then you talked with Mr. Orrick and the other gentlemen---

A Yes.

Q --did they indicate that they would negotiate?

A They were very reluctant, as I told you, and very against settlement. Mr. White said, "Why should we come to a settlement? Our position is a very strong one. We can go on with the law suit for years, and you have the charge of proof."

Q And did you at that time make any suggestions for

any kind of a settlement other than the full return of GAF to Interhandel?

1373 A No. The Attorney General himself told me that his position was delicate, too; that during twelve years, this law suit has broken down into all ranks of the Administration, that it would be more or less a settlement cutting the whole thing into half, but that he would leave this to eventual negotiations, but that he shared my opinion that perhaps it would be better to settle finally the thing than to see General Aniline going more and more down, and that he thought that Government should not stay in business.

Q Well, did Mr. Orrick seem well informed about the situation at that time?

A Yes, he was much better informed than when I saw him the first time.

Q Did he indicate that he had read the Trustee's Memorandum?

A I don't remember.

Q Do you remember whether the Attorney General indicated that he had?

A No, I didn't--- He was not informed in details about the thing. He was just informed in principle before my visit.

Q But Mr. Orrick did seem to be informed on details?

A Yes, all the advisers were informed about---

1380

BY MR. O'DONOGHUE: * * *

Q Dr. Schaefer, you say that no proposal was made by you before you went to see the Attorney General?

A No, there was no proposal made before. When I saw him, I asked about his opinion if there could be a settlement.

THE DEPUTY CLERK: Plaintiff's Exhibit 198 marked for identification.

BY MR. O'DONOGHUE: * * *

Q Dr. Schaefer, I am not sure I understood your answer. You had not submitted the proposal for the European Development Bank prior to your coming to Washington?

A I told you I talked about this idea to our Zurich lawyer, and that it could very well be possible that he talked about that to Prince Radzwill and that Mr. Robert Kennedy got aware of that, but it was flatly refused.

Q He flatly refused to consider it before you ever came to Washington.

A Yes. It was a washout. I wasn't surprised about that. I talked to Mr. Robert Kennedy about it, but I immediately saw this was impossible.

Q Let me show you what has been marked Plaintiff's 198 for identification and ask you if you can tell the Court

1381 what that is.

A Yes, that could have been this.

Q What is the letter?

A That is a letter of me, September 26th, to Mr. Spofford.

Q I offer this in evidence, your Honor.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

* * *

BY MR. O'LOUGHLIN:

Q What do you mean by the statement in here, "In the meantime I heard from my friend in London, but the Justice Department felt they could not entertain our proposal."

A A friend in London told his friend in Zurich this was impossible.

Q Who was the friend in London?

A The friend in London was Prince Radziwill. Therefore, he must have mentioned it to Mr. Robert Kennedy.

Q You had outlined it to your lawyer in Zurich?

A Yes. Not in written proposal. Just as an idea.

Q That is also what you refer to in your letter of October 9 to Mr. Spofford, Plaintiff's 197, "The reason for my interview with the Attorney General was to find out why
1382 my proposal was rejected."

A Yes.

Q That was the proposal you were referring to?

THE COURT: What is the answer?

THE WITNESS: Yes.

BY MR. O'DONOGHUE:

Q It had been rejected at that time.

A The Attorney General didn't even mention it. He just said, "I heard about your idea. It is impossible. We cannot do things like that.-- give back General Aniline and allow you to make a bank out of it.

Q Did you begin to make your arrangements then to see the attorney general without reference to Mr. Wilson or Mr. Spofford?

A I made allusion in these two letters that there is a possibility of a new contract, but I confirmed it only when I knew for sure that I have this appointment.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 199 for identification.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaeffer, I show you Plaintiff's 199 for identification and ask you if you can identify that.

1383

A Yes.

Q What is it?

A That is a telegram.

Q Dated what?

A Dated the 25th of October, '61, to the Attorney General confirming the meeting Monday.

MR. O'DONOGHUE: I order this.

MR. WILSON: No objection.

THE COURT: Without objection it will be received.

BY MR. O'DONOGHUE:

Q Now, you state in this telegram that you have informed Orrick that you will be in Washington Monday -- "Looking forward to having the pleasure of meeting you." Had you been carrying on correspondence with Mr. Orrick at this time directly?

A No, I just informed him that I would come to Washington for this meeting.

Q How did you inform him? By some separate telegram?

A By a separate telegram. I don't remember.

Q Did you send copies of them to Mr. Spofford?

A Perhaps it was done by Mr. Spofford who was fully informed.

1384 Q Did you send copies of those telegrams to Mr. Spofford?

A No, I just told him that or he knew I had this appointment, and we fixed the appointment for the following day in New York with Mr. Charles Wilson and Mr. Spofford.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 200 for identification.

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you Plaintiff's Number 200 for identification and ask you if you can identify that?

A Yes, that was a telegram from Mr. Spofford informing me that the Attorney General had agreed on the 30th or 31st.

MR. WILSON: What is the date?

BY MR. O'DONOGHUE:

Q What is the date of the telegram?

A The date of the telegram is October 7th, I think.
Yes, October 7th.

MR. O'DONOGHUE: I offer this, your Honor.

MR. WILSON: Let me see it, will you?

MR. O'DONOGHUE: Yes.

MR. WILSON: No objection.

THE COURT: It will be received.

* * *

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BY MR. O'DONOGHUE:

Q Mr. Spofford said in this telegram to you, "Look forward to your guidance as to specific subject matter contemplated participation in any preparation required here. Believe early clarification mutually desirable."

What did you understand by that?

A I thought that anyway it was necessary to inform immediately of my interview with Attorney General, the trustee, and Mr. Spofford and made, therefore, the necessary arrangements.

Q This is a telegram to you from Mr. Spofford.

He asked you whether -- what the subject matter contemplated at the meeting would be. Did you advise him what that was?

A No, I just told him when he was in Zurich that I would just know if there would be a decision from the Attorney General to consider settlement. That was the purpose of my visit.

Q So, when he asked you what the subject/^{matter} contemplated was you thought he already knew the answer.

A Naturally. It was a general question, having to continue the lawsuit or can we reach an agreement.

Q You regarded that as a foolish question on his part?

1386 A Not a foolish question, but he perhaps saw there was already a proposal or some figures or some definite question which was not at all the case.

Q In any event, you didn't think it necessary to answer him as to what the specific subject matter contemplated?

A I don't remember if I answered him.

Q You don't remember?

A I don't remember.

Q And, when he asked about participation, did you understand that to mean did you want him to participate in the meeting?

A It was never understood that he would accompany me. The Attorney General said, "I will receive Dr. Schaefer alone and talk with him."

Q When did he say that?

A Through our mutual friend.

Q You were asked that it be alone.

A I said I would have an interview. He said, "All right. I grant you this interview, but no intermediary, no counselor, no advisor because this must be a talk from man to man.

Q So, when Mr. Spofford asked you if you wanted him to participate --

A He didn't ask that. I don't believe that.

Q Is it that what you understand by participation?

A No.

Q You didn't either answer that or ask for clarification,
1387 did you?

A I informed him on his visit of the 6th of September in Zurich that I had an interview towards the end of October alone with the Attorney General.

Q He asked you whether any preparation required here.

A No, there was no preparation required.

Q You didn't answer that?

A No.

Q Then he said, "Early clarification mutually desirable. You didn't regard it, early clarification as being desirable, did you?

A I made the appointment to see these two gentlemen in New York immediately after the interview with the Attorney

General.

Q When did you make that agreement?

A Probably by phone or cable or by doctor Ulrich Wehrli. Anyway, we met at the Linke Club.

Q So, that your only response to this question posed by Mr. Spofford was to tell him that you were going directly to Washington and would see him afterwards, is that correct?

A Yes.

Q Now, when did you first make a proposal to the Department of Justice aside perhaps from your European Development Bank which must have been rejected before you came.

1388 A I never made myself a proposal. The Attorney General said that he had heard so much about interferences, intermediaries, and all sorts of people trying to make transactions that he was glad that something could be talked about directly between him and myself.

He advised in my presence -- He advised that he thought against their opinion that we should cut the apple more or less in half, but that would have to be worked out by his staff and by Interhandel. Therefore, no proposal came from my side. The talks began then in the spring of the following year in Munich.

Q No proposal then came from your side in the winter in December of 1961?

A I told him that settlement half and half would

(1238) really be great disappointment to public opinion in Switzerland.

Q Now, you say, Dr. Schaefer, you did not submit a proposal to the Department of Justice?

A As soon as the talks --

Q Can't you answer that yes or no?

A I don't remember. We probably made or gave suggestions, but word out proposals by us had to depend on the talks with Mr. Orrick and his collaborators, of the Justice Department.

Q I show you what has been marked Defendant's 56 and ask you to read that first sentence aloud. It, by the way, is from you to Mr. Charles Wilson and Mr. Charles Spofford,

1369 is that correct?

A Yes. "The proposal we submitted to the Justice Department is still being dealt with there. It looks as if the competent authorities are under the illusory impression that General Aniline is worth 100 million, and it would appear that they are trying to change the proposed proportions in their favor. We submitted long before a proposal to change the share capital of General Aniline. I don't know the details yet, because this was quite a complicated set-up.

Q What do you mean by saying -- What did you mean by saying "The proposal we submitted to the Justice Department is still being dealt with there."

A That is the change, I suppose, of the share capital of General Aniline and a depreciation of the worth of General Aniline, because a lot depended on what all parties thought General Aniline was worth.

Q You did make that proposal?

A I don't remember what is called proposal. It could be suggestion.

Q That is your language?

A Yes, I know. In hundreds of letters which one writes sometimes there is a word which is perhaps not very exact.

Q Well, then is the Court to understand that you did not

1390 make a proposal to the Department of Justice and this letter is mistaken?

A I don't know if there was a suggestion or proposal. Anyway, we certainly didn't make the proposal to have fifty-fifty settlement. That came from the other side.

Q And, you had always taken the attitude that you would not settle on a fifty-fifty basis?

A We hoped that we shouldn't have to settle on a fifty-fifty basis. Even our lawyer, Mr. John Wilson, was a little bit sceptic about the outcome of the lawsuit and encouraged us to continue the negotiations with the Attorney General's Department.

Q Did you make a proposal that you split fifty-fifty?

A No, I don't think we made this proposal. It was made by the other side. The Attorney General told me that he thought another arrangement would not be possible, because his advices were against a settlement, and that he needed quite some courage from himself to say notwithstanding all the legal facts, it is probably better to make an arrangement.

Q Dr. Schaefer, I show you Plaintiff's Exhibit 27 which is a letter from you to Robert Schmitz dated December 9, 1959, and ask you if you will read aloud this sentence beginning, "A settlement --"

A A settlement on the basis of fifty-fifty would

1391 therefore form a ready and sufficient compromise and would denounce forever such settlement as an act of clear violation of the rights of the private owners.

Q I show you Plaintiff's 32 which again is a letter to Mr. Schmitz from you dated January 23, 1960. There should be a translation of it somewhere. You can translate it for us.

A Yes.

Q Will you translate this paragraph.

A I don't think that ⁱⁿ this situation we should again undertake talks or trying in any sort before having a clarification of the fact, if on the highest authority they would be ready to accept a settlement on another basis than fifty-fifty.

Q Had you received an offer for a fifty-fifty settlement at that time?

A I don't think so. We were more or less hoping that the talks about negotiations would have a better result.

Q That is why you advised the trustee and his attorney as well as Mr. Schmitz that fifty-fifty was not acceptable?

A I didn't advise them. They said, "You should get General Aniline back in its entirety." This was a surprise for us all, but a very agreeable surprise. We hoped that the trustee could reach an agreement like that.

Q Isn't it true that the trustee and Mr. Spofford

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advised you that at any time during their negotiations they could easily gotten a fifty-fifty settlement?

A No.

Q And, isn't it true that Mr. Spofford when he saw you in Zurich on September 7th or 6th, 1961, advised you that he was working toward a settlement that he thought he could get with Mr. Orrick before the end of 1961?

A He told me that he had negotiations, but there was no result at all -- no offer and no promise that the end of the negotiations could be reached in a short time, and when we met at the Links Club and I told him about the result of my talks with the Attorney General, both gentlemen were impressed and said perhaps this way one could really reach an agreement, but that they hoped it would be a better one than fifty-fifty.

Q They were impressed?

A They were impressed, yes, and they didn't at all criticize me. They didn't withdraw immediately. Mr. Wilson asked me to continue the payments anyway for Mr. Schmitz. He verbally said, "Keep him out of my hair."

Q Just answer the questions.

A That happened at the Links Club.

Q I am not asking you what happened at the Links Club. I ask you whether they said they were pleased with the results of your conference?

1393

A They were not pleased because there was no result yet.

Q Did they indicate displeasure with you for undertaking this direct negotiation?

A No, they said, "Well, you did it. This is perhaps a very important step." They were naturally not very pleased because they couldn't get this arrangement or this interview with the Attorney General. They said, "This is a new approach. This is your responsibility."

Q You did not ask Mr. Wilson to withdraw as trustee, did you, at this time?

A All the confirmations that he would withdraw at any time. In January I think I wrote to him that it would be better to withdraw.

Q I am talking about at the Links Club. Was there any discussion of his withdrawing at that time?

A No, but he said and also Mr. Spofford said that they had probably to consider relinquishing of their functions, but it was not yet agreed on. I don't think that it was mentioned very clearly.

Q Now, did you ask them to continue to act in their capacity they were acting in as trustee and Attorney for trustee?

A Well, I told them as we had no confirmation yet

1394 from the Justice Department that real talks would begin, it would probably be better to wait until this confirmation would come.

Q Now, prior to your letter of December 4, Mr. Orrick and Mr. Wilson, you had carried on some correspondence with the Attorney General and Mr. Orrick, had you not?

A I don't think that there was a correspondence with the Attorney General. Anyway, it was to thank him because he delegated the talks to Mr. Orrick. And, there was only a year afterwards my second and third visit to the Attorney General.

Q I show you a copy of the Plaintiff's Exhibit 179 and you if you remember seeing that letter?: That is a letter of Mr. Orrick, is it not?

A Yes.

Q To you?

A Yes.

Q Dated -- what was the date?

A The date is November 29, '61.

Q Would you read it aloud, please?

MR. WILSON: What is the number of that?

MR. O'DONOGHUE: 179. It is a part of 179. It is attached to 179.

THE WITNESS: I have read with interest your

1395

correspondence to me and to the Attorney General. With respect to your letter to me, may I respectfully suggest that we reserve discussion of the points raised by the Board of Interhandel for further discussion which I hope will be in the near future.

Q What does that refer to?

A Probably to a decision of the Board of Interhandel making suggestions about General Aniline or about -- I don't know.

Q Do you have that correspondence?

A I don't have it here. It is probably in our files.

Q Does Mr. John Wilson have it?

A Probably he has it, yes.

Q Would you have any objection to his turning it over to me?

A No, but this was the beginning of the talks.

Q I am asking about the correspondence.

A I don't know what correspondence it is. I would have to see it first.

Q I would like to see it, too.

A Yes.

* * *

1396

MR. WILSON: What we are looking for is a letter from Dr. Schaeffer to Mr. Orrick. Wait a minute. Was that amongst those I gave you over the weekend?

Mr. O'Donoghue, did I not give you last week a copy of a letter from Mr. -- Dr. Schaefer to the Attorney General dated November 9, 1961? As a matter of fact, I don't mean to be putting it in a question. I did give you a letter.

MR. O'DONOGHUE: Oh, here it is.

MR. WILSON: Dated November 9, 1961.

MR. O'DONOGHUE: All right. I will put this in and ask him about it.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 201 for identification.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, I show you Plaintiff's 201 for identification and ask you if you can identify that.

A Yes, that is my letter to the Honorable Robert Kennedy.

MR. O'DONOGHUE: I offer that.

THE COURT: What is the date?

THE WITNESS: The date is November 9th after my return from the United States.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

* * *

BY MR. O'DONOGHUE:

Q But, that is not the correspondence referred to in Defendant's 56-A, the letter of November 29, 1961 to you

from Mr. Orrick when he talks about your correspondence to me and to the Attorney General.

A Yes, that could be, because I didn't write another letter to the Attorney General.

Q There was another letter from you to Mr. Orrick, I take it.

A That could be, yes.

Q And, you were talking to him on the telephone, too, at this time?

A Yes, he informed me that he would come in December to Zurich and that we could have a talk in Zurich at preparation for the settlement or agreement talks which would begin later the following year.

THE DEPUTY CLERK: Plaintiff's Exhibit Number 202 marked for identification.

* * *

1398

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit for identification Number 202 and ask you if you can identify that?

A Yes.

Q What is that?

A A telegram to the Attorney General and to Mr. Orrick, hoping that before the Board meeting of Interhandel we could get an answer to our proposal for settlement. That means we

probably had the letter to Orrick proposed settlement two to one or something like that.

MR. WILSON: What is the date of that?

MR. O'DONOGHUE: The date of that is December 7, 1961.

THE WITNESS: Yes.

BY MR. O'DONOGHUE:

Q And, you said with reference to your letter of December 4, 1961, that you had not made a proposal. Did a proposal come in the interval between December 4th and December 7th?

A Well, it could very well be that we made suggestions to Mr. Orrick.

MR. O'DONOGHUE: I am going to offer this, your honor.

MR. WILSON: No objection.

THE COURT: It will be received in evidence.

* * *

BY MR. O'DONOGHUE:

Q You asked him -- You drew his attention to the necessity for urgent decision?

A Yes.

Q And sincerely hope our proposition for settlement will be accepted in next Thursday's meeting between Mr. Orrick and our attorney.

A It wasn't accepted as I remember.

Q Well, you don't remember what your proposal was.

A It was probably a suggestion -- I don't remember -- two to one or something like that.

Q You don't remember what you talked about?

A No, I didn't read all of the letters before, I came here. You can certainly see the records if you wish. We have no secrets at all.

Q That I would be glad to do if it can be produced. When you refer to our attorney, who did you mean?

A Pardon.

Q When you say, "our attorney" who do you mean by that?

A Mr. John Wilson and Mr. Edmund Schriber.

Q In this particular telegram, who were you referring to?

A Mr. John Wilson. He was our attorney.

Q For settlement negotiations?

A No, not for the settlement. For the lawsuit.

Q Wasn't this settlement negotiation that you were talking about?

A It was a settlement, but he probably in his lawsuit reached a situation where it would have been very agreeable to know that the settlement would be forthcoming.

Q What had happened in the lawsuit?

A I don't know. Perhaps Mr. John Wilson can inform you,

He advised us, "Yes, make the settlement."

Q Now, earlier you said that settlement negotiations were in effect none of John Wilson's business?

A Yes, certainly not.

Q Certainly not?

A No.

Q When did they suddenly become his business?

A They were never his business only for formal judicial execution of the final settlement, but talks between Attorney General's advisor -- that means Mr. Orrick, and ourselves took place without the presence of Mr. John Wilson.

Q Now, you are referring to a meeting between Mr. Orrick and your attorney, are you not?

1401

A Myself and our attorney in Zurich, Mr. Wehrli.

Q Was he over here?

A No, he was in Munich.

MR. WILSON: They are talking about two different things. He is talking about Munich. He is talking about the case.

THE WITNESS: I am talking about the conference in Munich which lasted two days where Mr. Wehrli was present.

BY MR. O'DONOGHUE:

Q I am talking about your telegram of December 12th, 1961.

MR. WILSON: December 7th.

BY MR. O'DONOGHUE:

Q December 7th, 1961.

A Yes.

Q I am asking you who the attorney was then for settlement discussion?

THE COURT: Do you want to read the telegram, sir?

MR. O'DONOGHUE: I will reread this telegram which is Plaintiff's 202.

The Honorable Robert Kennedy and W. H. Orrick, Jr., Assistant Attorney General.

My Dear Mr. Attorney General and Mr. Assistant Attorney General stop in view present incertitude on account of rumors regarding delays I take liberty to draw to your kind attention necessity for urgent decision and sincerely hope our proposition for settlement will be accepted in next Thursday's meeting between Mr. Orrick and our attorney. Regards, respectfully, Shaefer, Bank Union.

THE COURT: What is the question?

BY MR. O'DONOGHUE:

Q What lawyer are you referring to? What attorney are you referring to?

A Probably Mr. Wehrli. It could be advise of Mr. John Wilson -- settle it. Both are possible. Both advised us -- make the settlement.

Q What are you referring to when you say, "in view present incertitude on account of rumors regarding delays"?

A There were rumors at the stock exchange and in the newspapers and amongst the public that there was no agreement possible, and therefore stock exchange will get shaky and everybody was nervous.

Q You didn't want the stock exchange to get shaky, did you?

A We did not offer very much about the stock exchange --

Q Now, was Mr. Wilson still your trustee at this time of all of the powers originally granted?

A For the lawsuit, yes.

Q For the lawsuit?

A Yes.

1403 Q Or Mr. Charles Wilson?

A For settlement talks, Mr. Wilson was informed, but he had no powers to make the second one, because the settlement -- the first serious talk about the days of settlement happened in April in Munich in '62..

Q Well, I am talking about all of the settlement discussion of proposal or whatever they were that were going on in November and December of 1961. Was he the trustee then?

A The former trustee relinquished his trusteeship only in the beginning of the following year. That means

Mr. Charles Wilson was formerly trustee, but for law situations and for discussions about the law side, Mr. John Wilson was in full power as attorney.

Q How do you draw the line? What authority did Mr. Charles Wilson have as compared with Mr. John Wilson?

A All these questions were always mixed. There was always a judicial side and there was a settlement or moral side or value side.

Q These discussions all had nothing to do with the trial of the lawsuit, did they?

A No, the law suit continued.

Q That was Mr. John Wilson?

A Yes.

Q But, Mr. Charles Wilson was given plenary powers to negotiate any settlement, was he not?

1404 A Not this settlement which was enabled by the decision of the Attorney General. He and Mr. Spofford really withdrew and said, "This is your responsibility and your settlement."

Q Did you ask them to resign at this time?

A I asked them informally to resign. At the Links Club there was no talk about resignation. I said, "We have no formal proof that there could be a settlement. We have only the willingness of the Attorney General to try to do his best."

Q. Now, when did you say you asked Mr. Wilson to resign?

A I think this must have been in January, '62.

Anyway, I wrote him a letter. I got an answer about two months later or one month later.

Q May we have Plaintiff's 172, please?

THE DEPUTY CLERK: Yes.

BY MR. O'DONOGHUE:

Q I show you Plaintiff's Exhibit Number 172 and ask you if that -- which is a letter from you to Mr. Charles Wilson, and ask you if that is the letter you refer to?

A Yes, that is the letter that I refer to.

Q What is the date of that?

A That is February 12th.

Q 1962?

A '62.

Q Now, you never asked him before that about resigning?

A No, but we made sure that we could do it any time, and he said the same thing and confirmed it.

Q You didn't have the right in your estimation to discharge him.

A What?

Q To discharge him. To fire him.

A If you revoke power, you could call it fire, perhaps. We never contemplated it in these terms. There could have

been a new situation where his trusteeship wouldn't be working anymore.

Q Now, Dr. Schofer, the language used in that power includes the word "irrevocable."

A Yes.

Q What did you mean by that?

A That was the proposition of Mr. Schmitz, and of the trustee, and that was the reason why I talked about that with Mr. Charles Wilson in Paris, and that naturally if the situation changes, there must be the possibility to revoke. He said, "Immediately you can be sure that if you wish to revoke my power, I will do it."

Q You mean that if you asked him to resign he would do it?

A Yes, he would do it. He said, "We act from man to man. I can very well understand that there could arise a situation where it would be better to resign, or a mutual agreement about my resignation taking place."

Q You understood you were not entitled to revoke it?

A Oh, yes. He confirmed it himself in his letter.

Q Now, when you were considering the powers in Paris, you wanted some change made in the idea that if he was getting ready to sell he would consult you, isn't that true?

A Yes.

Q That was put in the form of a letter?

A Yes.

Q As kind of a modification of the agreement?

A Yes.

Q But, no modification was put in about the revocability of it?

A No, that was a verbal agreement.

Q Did you not consider that your request for him to resign terminated the trusteeship, did you?

A When I wrote this letter asking or begging him to resign, I think he thought this would be the end of the trusteeship because the Justice Department said, "We will have these talks directly with you and not through an intermediary."

Q He did not resign at that time, did he?

A He waited, I think, about two months until his formal letter of resignation arrived. Neither he nor Mr. Spofford were working on the case any more.

Q I show you defendant's Exhibit 7. I guess this is a copy of it. May I have Defendant's 7?

THE DEPUTY CLERK: Yes.

BY MR. O'DONOGHUE:

Q I show you Defendant's Exhibit Number 7 and ask you if that is a copy of his reply to you -- to your letter of February 12?

A Yes.

Q Does he submit his resignation by that letter?

A Yes, March 25, '62.

Q Where does he say, "I resign."

A Under these circumstances the continuation of the trusteeship cannot serve any purpose, and I have therefore decided to surrender my power of attorney as soon as the necessary formalities can be completed.

Q They have not yet been completed?

A I don't know what the formalities were.

Q You looked for further -- some other resignation, did you not?

A Pardon. I didn't understand you.

Q Didn't you look for some other resignation?

A Well, we thought Mr. Spofford would resign because he was his legal advisor.

Q He did not have to resign to you, did he?

1403 A No, he would have to resign to Mr. Charles Wilson,

Q I show you Plaintiff's 146, Dr. Schaefer, and ask you if you can remember receiving that letter?

A It could be. I don't remember the letter.

Q It is a letter of February 13, 1962 in which Mr. Wilson indicates he is still the trustee, isn't that true?

A Yes.

Q He is still authorized to act on behalf of Interhandel.

THE COURT: Is that a question?

BY MR. O'DONOGHUE:

Q Yes, your Honor.

A Well, I think as he had already our letter begging him to resign, he probably couldn't act in any way. In our discussion at the Links Club the first of November, both gentlemen said they would abstain to do anything and wait developments in our talks with the Justice Department, because this was considered by them as a new line.

Q I show you Plaintiff's 147 and ask you if you can remember that letter? It is a letter addressed to you from Mr. Wilson dated June 30th, 1962.

A Yes.

Q His accounts were submitted at that time?

A Yes, and form of letter in which he surrendered the trusteeship.

Q Do you remember his saying, "Upon receipt of your confirmation that my accounts are satisfactory to you, and upon receipt of your remittance covering the enclosed statement for legal services, I will sign the surrender of the power of attorney in the form enclosed, and will return to you my executed copy?"

.. Yes.

Q As of June 30th, 1962, he had not formally resigned?

A Formally he was trustee until this date of the form resignation, but he didn't see as trustee.

THE DEPUTY C. HALL: Plaintiff's Exhibit Number 203 marked for identification. Plaintiff's Exhibit 203 for identification is withdrawn.

MR. O'DONOGHUE: Yes.

BY MR. O'DONOGHUE:

Q I show you Defendant's Exhibit 61 dated June 8, 1962. That is a letter from you to Mr. Wilson. In that you asked for his official resignation, didn't you?

A Yes.

Q As of that date?

A Yes.

Q June 8, 1962 you regarded him as still trustee with the powers accorded him in April, 1960.

A I don't think that he had the powers any more. He had the formal trusteeship, but he was well aware and told me that he wouldn't do a thing after the talks with the Attorney General, that he considered his mission as finished.

1410

Q Why did you feel it necessary to write that letter?

A Well, we said it is not necessary finished, because we can't know that the promise -- personal promise of the Attorney

General to try to reach a settlement would be forthcoming. Therefore, just let the whole thing be in abeyance for a short time. That was more or less our understanding at the Links Club, during our conversation at the Links Club with him and Mr. Spafford.

Q Now, did Mr. Wilson ultimately tender his resignation?

A Yes, I think so.

Q I show you Plaintiff's 175. Is that your final acceptance of it on August 6, 1962?

A Yes.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN A. SCHWARTZ,

Plaintiff,

v.

DOCKET INFORMATION CO.,

Defendant.

CIVIL ACTION 85-67

Washington, D. C.

Tuesday, February 3, 1978

VOLUME XVI

(Pages 1412 - 1546)

Plaintiff's
Copy

MARIE S. TAYLOR
Official Reporter
Room 6812 - U.S. Court House
Washington, D. C.,

* * *

1414

BY MR. O'DONOGHUE:

Q Doctor Schaefer, how many times did you see Mr. Robert Kennedy?

A I think all together three times.

Q Were two of those on the same visit?

A Two were on the same visit.

Q That was October 31, 1961?

A I think it was when we signed the first draft of the agreement, when I saw him twice and I saw him once the same day on the 30th of October in the morning, and then after an afternoon session with his advisers.

Q I see. In other words, until the final phase of the settlement you had only seen him once?

A Once, yes, -- twice the same day.

1415

kind?

Q Once to say good-bye to him, or something of that

A Yes, then I had different phone calls in between with him.

Q You had some phone calls -- how many phone calls?

A Certainly about four or five.

Q When were these phone calls held?

A After my first visit during the last part of '61.

Q Did you tell Mr. Spefford or Mr. Charles Wilson about these phone calls?

A I certainly did.

Q When did you tell them this? At what form did you do it?

A When we met after the final draft of the settlement.

Q When you met Mr. Charles Wilson and Mr. Spofford?

A Yes.

Q When was that?

A That was at the Links Club after the final draft was signed.

Q What was the date?

A It was in fall of '62.

Q Between November 1, 1961 and the fall of 1962, you did not keep him advised of the proceedings and negotiations, did you?

1416 A No, because Mr. Spofford and Mr. Charles Wilson said this is our own line, that they would not take part in these negotiations.

Q Did you undertake at the meeting, at the Links Club in November 1, 1961 to keep them informed?

A I said that we would have to see how the procedure would go on, how the talks would shape out. That there was no definite manner of settlement but that I told them exactly what the Attorney General told me during my visit.

Q Did you undertake at that time to keep them informed of your future negotiations?

A I certainly did.

Q But you did not, did you?

A Well, after the Munich trial, the Munich discussions there was nothing yet settled. Therefore, I could not give them any definite details and in between their power of trustee was withdrawn.

Q I am talking about in the latter part of 1931. When you say you were carrying on negotiations by telephone, did you keep them informed?

A No, there was no negotiations. Before we met in Munich there was no negotiations.

Q There was none?

1417

A No, just --

Q You made no offer?

A I tried to get an offer from the Government. I tried to have the minimum basis on which a settlement could be reached and I told them I would have to submit to the Board of Interhandel the minimum basis on which the Government thought an agreement could be reached.

Q Did you make an offer to them during this period?

A No, I did not make an offer. The offer was made -- rather the opinion was rather given by the Government on what basis they could make a settlement.

Q Did they ask you that -- did the Government ask you that?

A The Government said that it was only on this basis that a settlement could possibly be reached.

Q On what basis?

A They said there would be a basis of 10-15, or about that.

THE COURT: All right. Plaintiff's Exhibit 203 marked for identification.

* * *

1-2- Q Dr. Schaefer, I show you what is marked Plaintiff's Exhibit 203 and ask you if you can identify that?

A Yes.

Q What is that?

A That is a telegram to the Honorable Robert Kennedy from myself, the 23rd of January, '62.

* * *

THE COURT: What is the date, is it the 23rd?

MR. O'DONOGHUE: It's January 23, 1962, Your Honor.

BY MR. O'DONOGHUE:

Q This reads, Dr. Schaefer:

"No cable received, sorry to trouble you.

But my position with Swiss authorities, shareholders and press very difficult and very important for situation be clarified before your departure. Stop. Practical points can be discussed during your absence but would greatly appreciate a decision in principle at this stage."

141a

What do you refer to by that?

THE COURT: To whom is that addressed, Mr. O'Donoghue?

MR. O'DONOGHUE: Honorable Robert Kennedy.

THE WITNESS: I had, in between, the visit of Mr. Orrick in December of '61, in Zurich but unfortunately I did not get a promise or I did not get a definite offer. He said that he would have to refer to the Attorney General, and as we had since four years of very stormy meetings of our shareholders and as public opinion was very preoccupied I did my best to get a definite promise that on this basis, the Government would agree to a settlement which was not yet reached at that time.

BY MR. O'DONOGHUE:

Q Had you made a proposal?

A Well, I made the suggestion that we could talk out the details and that probably we would be agreeable to accept a proposition from the United States Government, but that I couldn't just propose anything definite to the Board of Interhandel without having this proposition.

Q Is it your testimony that you made no proposition?

A Well, when I used the word "proposal" it was rather in the conception of suggestion and trying to get a definite answer from the Government. We couldn't make a proposal from our side because a lot of details were not yet clear. The intervenors, the capitalization of General Milline -- different

142a

any other way. I think that I could have signed at this stage, is that the Government's position, at this time, is that it is going to a court trial.

Q And what was the Government's position then that you were then to get on?

A The Attorney General said that there probably was no other possibility than to cut the thing in half.

About details his advisers would then have to talk to me. I always hoped that perhaps we could get a better deal.

Q Let me show you Plaintiff's Exhibit 208 for identification and ask you if you can identify that?

A Yes. That's a telegram from the Attorney General to me dated January --

Q January 26, '62, I think.

A January 26, '62.

MR. O'DONOGHUE: I offer this, Your Honor.

MR. WILSON: No objection.

THE COURT: It will be received.

* * *

MR. O'DONOGHUE: I'd like to read it and ask some questions about it.

1421

The text --

"Some text mentioned in our telephone conversation contemplates United States will receive the first 12 percent of proceeds of sale as compensation for shares to

which Interhandel makes no claim and the remainder will be divided 50-50 between Interhandel and United States. If this assumption is correct we shall again be willing to discuss this and other aspects of the proposed agreement with you."

BY MR. O'DONOGHUE:

Q Did you understand that to mean the Attorney General was asking you if these were the terms of your proposal?

A These were made from my side as suggestions. The sums involved were so heavy, especially the tax claim and the additional shares that this could influence the 50-50 principle considerably.

Q You thought it was more complicated than that then, did you?

A It was very complicated, yes.

Q Yet the basic agreement for settlement was not very complicated, was it?

A No.

Q And these were the basic terms of the agreement that you submitted to him?

1422 A I didn't submit it to him. I said could you give us your proposition on what basis the American Government would be ready to settle.

Q Now, what was your opinion, then, of your proposal, and how did you want to sell it to the Government?

A The proposal was made to the Government, and it was accepted, terms. I always kept the details, the detailed deliberations that we would get. After that, we would then just a 50-50.

THE COURT: All right, while 200 and 100 marked for identification.

* * *

MR. WALKER: no objection.

BY MR. O'DONOGHUE:

Q I show you what has been marked Plaintiff's Exhibit Number 2.0 for identification and ask you if you received that?

A Yes. Telegram from Mr. Kennedy.

Q Saying telegram sent two days. Sent two tracers. Stop, Kennedy.

MR. O'DONOGHUE: I understand there is no objection and I am offering it.

THE COURT: It's received.

* * *

1423

BY MR. O'DONOGHUE:

Q Now I am showing you Plaintiff's 200 for identification.

A On 25 of January, '62, a telegram from me to the Attorney General.

MR. O'DONOGHUE: I offer this too, Your Honor.

THE COURT: Without objection they are received.

* * *

BY MR. O'DONOGHUE:

Q Dr. Schaefer, this telegram of yours of January 23 is in answer to the Attorney General's telegram of January 23, was it not?

A Yes.

MR. O'DONOGHUE: May I read it, Your Honor?

THE COURT: Yes.

MR. O'DONOGHUE: (Reading)

"The Honorable Robert Kennedy, Department of Justice:
Thanks cable. Stop. Your understanding expressed in your
cable correct. Stop. Therefore can be assumed that con-
clusion in principle agreed upon. Stop. Shall telephone
you tomorrow eleven o'clock your time to find out which
discussion details and which aspects would be agreeable
to you. Regards. Schaefer."

BY MR. O'DONOGHUE:

Q In other words, isn't it true that he was saying to you that -- no, that you were saying to him, yes, his understanding of your offer of the first 11 million to the United States and then a 50-50 split was correct?

A Yes.

Q That was your offer, was it not?

A That was his office. When we entered his office, he said, "We have first to consider the tax claim and we have first to consider the deduction of those additional shares."

Q Was that expressed in his office to you?

A No, rather in the telephone discussion.

Q I see.

A I tried to better the condition but he was very tough.

Q Your face to face meetings with representatives from the Department of Justice, as far as negotiations were concerned, were then primarily with Mr. Orrick, were they not?

A The first meeting was in the afternoon, after my visit to the Attorney General and there were present Mr. Orrick, Mr. White and two members of the Alien Custodian of the Justice Department. And they all told me, especially Mr. White, that they were not favorable to an agreement because they thought that their juridical position was quite a good one.

Q I don't think this is responsive to the question. The question is after that you dealt primarily with Mr. Orrick, is that correct?

A Yes. Then Mr. Kennedy told me he instructed Mr. Orrick to conduct talks about the settlement.

Q In other words, the Attorney General turned over the matter to Mr. Orrick to handle?

A After having made a decision on principle, consisting -- these were his own words -- "We should try to come to a settlement that is in the mutual interest of the United States and Interhandel."

Q But the negotiations then were handled by Mr. Orrick?

A Yes. He was charged by the Attorney General.

Q Just as they had been before your meeting with the Attorney General, isn't that true?

A There was no negotiations with Mr. Orrick. There was a visit to Mr. Orrick, and the first time he said that he was not yet familiar with the case --

Q I am not talking about your visits; I am talking about Mr. Spofford's and Mr. Charles Wilson's negotiations.

1828 This had been with Mr. Orrick during the Spring and Summer of 1931, isn't that correct?

A They informed us that these talks with Mr. Orrick came to no result --

Q I am not asking you that. Weren't the negotiations handled by Mr. Orrick with Mr. Spofford and Mr. Wilson?

MR. WILSON: I object to the form of the question. There is no evidence Mr. Wilson participated in the negotiations. If he is speaking about Mr. Spofford as the agent for Mr. Wilson, this is understandable, but there is no evidence Mr. Wilson had any negotiations with Mr. Orrick at all.

THE COURT: Is there any evidence that Mr. Wilson saw Mr. Orrick?

MR. O'DONOGHUE: I am not sure about that, Your Honor.

THE WITNESS: Yes, I am sure that only Mr. Spofford saw Mr. Orrick.

BY MR. O'DONOGHUE:

Q Negotiations on behalf of the trustee were being carried on by Mr. Spofford and Mr. Orrick at that time?

A (Inaudible)

THE COURT: What's your answer?

THE WITNESS: After the visit of Mr. Spofford --

1927

Mr. Wilson: The answer was -- if I may supply it --

THE WITNESS: If you could then negotiations they were with Mr. --

MR. O'DONOGHUE: I don't think Mr. Wilson can supply the answer.

THE COURT: Let Dr. Schaefer give the answer.

THE WITNESS: Mr. Spofford did not inform us that there were negotiations about a settlement. He informed me that he had talks with Mr. Orrick, especially also about the pending possibility of a legislation of the United States Congress about the sales bill, that General Aniline should be sold.

BY MR. O'DONOGHUE:

Q Do you make a distinction between negotiation and talks?

A Oh yes, certainly.

Q What's that distinction?

A Because Mr. Spofford, when he came to Zurich in September '61, he told me that there were no results emanating from his talks, therefore I couldn't qualify these talks as negotiations about a settlement and three weeks later, after me myself having informed him about the contact I would have with the Attorney General, he advised me strongly in a letter to follow these contacts and to come to an agreement in view of the juridical situation and the pending legislation.

Q As far as you were concerned, the efforts of the trustee, and Mr. Spofford had been to obtain the full return of General Aniline and Film to Interhandel?

A Yes.

Q And you had never suggested to them that they do anything different from that?

A No, and they didn't suggest it either.

Q Did not Mr. Spofford indicate to you in his talk with you in Zurich in September of 1961 that he was working toward a good settlement?

A No. If he would have done that I would certainly have asked what the result was and what the possible settlement could be.

Q When did you first indicate to the Attorney General that you would be willing to settle on a 50-50 basis?

A Well, in my first meeting with him I asked him if he would be willing to come to a settlement. He said yes, after having heard me for about an hour or an hour and a half. I asked him, "On what basis, do you think?" Then he answered, "I am sitting in the same place now as you are, therefore, I think I would have to come to a settlement only on the basis of half and half," and I answered that this would be very, very, very difficult to accept this in Switzerland and it was very important to the character of the settlement.

And he said then, "All my advice is tell me that you shouldn't do this. Therefore listen to this this afternoon and tomorrow. If you think we can do something in our negotiations I am willing to do it."

Q When did you first indicate to him you would be willing to settle on a 50-50 basis?

A I was never willing. I had to accept -- it was practically dictated, for a matter of fact -- or otherwise the United States Government wouldn't be willing. I was never willing. I was very disappointed.

Q You indicated your willingness ultimately, did you not?

A Afterwards I had to. Otherwise we couldn't have reached a settlement and as to 50-50 --

Q When was that? That's what I'm trying to find out.

A When I saw that no other possibility was --

Q Let's give it by date, Dr. Schaefer.

A I have no date. Probably the moment of one of my telephone calls with him.

Q In other words, sometime before January 26 of 1962?

A Probably, because in February -- already talks in 1960 Munich began in February.

MR. WILSON: You're off on that date, too, by the way.

MR. O'DONOGHUE: This is remarkable, Your Honor.

THE COURT: Let's proceed.

BY MR. O'DONOGHUE:

Q You had met Mr. Orrick in Zurich sometime around Christmas time of '61, had you not?

A Yes, he came to Zurich around this time.

Q And had you indicated to him then that you were willing to accept this 50-50 proposition?

A No, I tried to better it. But he said, "There is probably no possibility at all. We can just talk what the amount of the deductions of the tax claim would be."

Q Now do you think that the suggestions over 18 months or so, that the Swiss, Interhandel, wanted the full return of GAF, made it easier for you to settle on a 50-50 basis when the time came?

A We were very skeptical about the possibility of a full return but we believed in it. In the beginning Mr. Charles Wilson and Mr. Tolson told us, that we have to fight and we will have to fight for the full return. For a few months we held out in that. As time went on we got more and more skeptical about the full return because there was no result and no change in the position at all.

Q I don't believe you understood my question, Dr. Tolson. I asked you whether the persistent representations to the United States Government during the period from June of '41 to October of 1941, for a full return of G.I.'s, facilitated your settlement on a 60-40 basis?

A I don't think that it influenced my talks at all because the Attorney General told me verbatim that there was never, and never could be a question of full return, that he considered that as absolutely out of any discussion.

Q So that, don't you think that when your representatives had been holding out for, let us say, a hundred cents on the dollar for 18 months, it facilitated the arrival at a bargain when you indicated your willingness to accept 60 cents on the dollar?

A I don't think it influenced the decision of the United States Government at all, and it didn't facilitate our talk.

Q Isn't it true that negotiations and lawsuits and everything else had been proceeding for some 20 years when the trustee was appointed and nothing had happened?

A About 14 years.

Q 14 years. In other words, only from 1946?

1432

A About '46, I would say.

Q And these negotiations had been carried on for 14 years without --

THE COURT: You say negotiations?

THE WITNESS: He had no negotiations, lawsuit.

MR. O'DONOGHUE: You have a meaning for negotiations that I don't understand.

Various attempt, let us say, by lawsuits in international courts, the courts here, your sending emissaries had produced no results, had they?

THE WITNESS: That was all part of the lawsuit conducted by Mr. John Wilson.

BY MR. O'DONOGHUE:

Q And after the trustee had been negotiating for some 18 months, then within a matter of a few weeks you were able to reach a settlement after that, isn't that true?

A Oh, no. It needed about one year.

MR. WILSON: You know what I am going to object to and you have overruled me.

THE COURT: Yes.

MR. WILSON: OKAY.

BY MR. O'NEILL:

Q But the essential agreement was reached when -- the 1936 basic agreement?

A The basic agreement to settle was reached and then the actual terms of the settlement were reached. The Attorney General, he took from the decision that it would be better to settle.

Q When was that?

A That was during my first visit the end of October.

Q In other words, the basic agreement to settle was reached then?

A To settle, yes.

Q And when were the basic terms of the settlement reached?

A That was reached long after Munich. We had in Munich three days of negotiations.

Q Wasn't the basic terms reached in the exchange of cablegrams by you?

A Not yet, no.

Q When you met in Munich who did you deal with?

A Mr. Orrick and one of his collaborators.

Q And wasn't the basic agreement clear at that time?

A Not quite clear yet. There were a lot of questions of minor importance, but because of the volume of the sums

involved being quite important and we didn't already reach an agreement in Munich.

1434 Q Well, if it was clear to all except the details isn't that true?

A Mr. Orrick had accepted only the 50-50 settlement, deducted the claims of the United States Treasury in taxes.

Q And that's basically the final settlement, wasn't it?

A No, not yet, because when afterwards when Mr. Orrick was replaced by Mr. Katzenbach, Mr. Katzenbach even increased the tax claim.

Q Well, it was just a matter of the amount of the tax claim?

A It was a matter of the amount.

Q And you hadn't agreed on the amount of the tax claim in Munich?

A No, we had not yet.

Q But you had agreed whatever that tax claim was would be deducted, isn't that it?

A Yes.

Q So what was the date of that meeting in Munich?

A That was in April, end of April. I think 26th of April, '62. It lasted three days.

Q Did you indicate that Mr. Charles Wilson had expressed himself as satisfied with your activities?

A To whom did I say that?

1436

Q I thought -- did you tell us that in your testimony here?

A Mr. Spofford said that he was welcoming them, and that this was like the case of Mr. Charles Wilson, and I indicated that that was the case and when the final draft was written in Washington, Mr. Spofford declared to me that there was no new line he could not force -- that this was our responsibility.

Q I am asking you whether Mr. Wilson indicated that he, as your plenipotentiary, was content with your activities, despite his authority?

A Well, when he saw, when he knew that we came down to deliberations in Munich we wrote him formally that now the moment had come when we would welcome if he would resign, then we would revoke his trusteeship.

Q In other words, after the Munich agreement you asked him to resign his trusteeship?

A No, before.

Q What did you say about Munich then?

A Munich was in April.

Q What was the relation of that with his trusteeship, that's what I didn't understand your answer.

A The trustee and his legal adviser didn't participate

1436 at all in these negotiations of ours. They said that only when I informed them the day of my first interview with Mr. Kennedy that they couldn't and wouldn't participate.

Q Did you promise to keep him informed, then, of all negotiations?

A I didn't see a need to keep him informed. These were our negotiations. I certainly promised him naturally that I would inform him about the result of these, our negotiations.

Q I am reading you from Defendant's Exhibit Number 7 a letter from you to Mr. Wilson dated March 26, 1932, where he said:

"I am only interested in continuing to hold my power of attorney so long as its exercise can contribute to the solution of the Interhandel problem, and so long as there is mutual confidence between us. Certainly this mutual confidence does not any longer exist. You have made this plain on your part in various ways which I need not go into. On my part I am frank to say that you have dealt with me in a less open manner than a satisfactory relationship requires, and that your methods of proceeding are not what I understood they were to be when I accepted the power of attorney. I am referring particularly to the extraordinary steps you took to reach the Attorney General without my knowledge at a time when we had agreed

1437

with Mr. Spafford in an official proceeding, which shows a real promise of settlement.

"Also and, for your information, as we in our last meeting that I would be kept advised, I would like your direct communication with Mr. Spafford so that I might be in a position to keep him advised. As far as Mr. Spafford is concerned, I remain completely in the dark as to the present status of the matter on the basis you are now working on."

Do you remember that letter?

A Certainly.

Q And does that refer to your recollection of your promise to keep him informed?

A Not at all, because I told those two gentlemen clearly, in our meeting in New York, that I intended to pursue these negotiations after having reached a sort of agreement on the principle with the Attorney General, and they acknowledged this and said all right, this is your line, we are sorry, but we understand that you have to do your utmost, and it was especially Mr. Spafford who said, "I understand that you have to do this in view of the difficulties you are in."

Q Then was this your first intimation from Mr. Wilson
1436 that he was dissatisfied with your method?

A Yes, he was certainly not very satisfied, but I told him --

Q Wait a minute. Was this your first intimation or did he tell you that at the Links Club on November 1?

A At the Links Club I had the impression that he was not very happy about this thing.

Q And he told you that in no uncertain terms?

A Certainly he told me that in very friendly and gentleman-like terms.

Q But leaving no doubt in your mind that he was very much vexed by what he had done?

A Probably, yes.

Q By the way, you had met with a Mr. Benjamin Javits in Munich -- in mean in Zurich, in the summer of 1961?

MR. WILSON: May I interrupt the Court. May I object to this until the relevancy is disclosed?

THE COURT: I will overrule the objection.

THE WITNESS: Mr. Javits had nothing to do with the case. He tried just to offer his services and we told him that there is no need at all. Wrote him a friendly letter and the whole incident was closed.

Q Did he give you an opinion, a written opinion about
1439 the case?

A He said that he would like to give us a written opinion. I don't know if he sent something. He anyway considered this visit as highly inopportune.

Q Inappropriate?

Q No, that's correct.

Q Oh, that's correct.

A Inexpensive.

Q You don't know where he was in life --

A I don't know.

Q You didn't have any of the conviction?

A As far as any witnesses trying to interfere that Mr. Davies was just one among quite a number of others which we all refused to talk about this thing.

Q What was he interfering about, what he attempted to do?

A He attempted to help us or to be our agent or something like that, but we didn't take this as serious or necessary at all.

Q Do you have in your files a copy of his opinion?

A I don't know, I don't think that I have one. I just have the copy of a letter a colleague of mine wrote thanking him for his visit.

1175

Q He sent you a bill for legal services, did he not?

A I don't remember at all. So many people tried to send bills that this was perhaps one among a lot of others.

Q Dr. Schaefer, what was the ultimate recovery so far as Interhandel was concerned in this settlement with the United States Government?

A In dollars?

Q Yes.

A It was about 110 or 115 million dollars.

Q Wasn't it somewhat more than that?

A Could be, but we had to deduct legal fees and the tax which we had to pay Switzerland and so on.

Q I see. That's after the payment of legal fees and --

A I don't remember the exact sum any more.

Q I see.

A But the sale was highly successful. The sale of General Aniline was highly successful because it was at a time when the stock exchange was very high and the bid was very high.

Q Do you know what it represented per share for Interhandel, do you have any recollection of that?

A Well, that would have meant that it was about 3,500 francs per share.

Q Which is about?

1441 A About three times nominal value of the shares -- three and a half.

Q To reduce that to dollars, is that approximately \$900?

A Yes, that would be approximately this, not quite.

MR. O'DONOGHUE: Excuse me a second, Your Honor.

BY MR. O'DONOGHUE:

Q How many shares did that represent, do you know?
How many shares of Interhandel were there?

A Well, there were about 220,000 shares of Interhandel.

Q So you divide your 220 million or so by 220,000?

A Yes.

Q And that would be the value of a share?

A Yes, but Interhandel had other capital outside of the 220 million shares -- so that after having settled the whole thing, each Interhandel share was worth around \$4,500 or \$4,600 in the market. It was about \$1100.

Q About \$1100? What were the holdings of Interhandel other than CAF, were there any substantial --

A They had substantial participation, majority participation in a film company and they had the whole capital of what the insurer bank in Frankfurt, worth about 50 to 60 million Swiss francs.

14-2 Q In other words, of the value of Interhandel, about one-third was represented by its interest in CAF and a hundredth interest in the other?

A More or less, yes.

Q Dr. Schofer, when you first met Mr. Robert Bernheim, did he tell you that he had been interested in trying to work out some kind of an agreement with various American companies for the purchase of CAF -- the purchase of CAF from Interhandel?

A He made allusions to that only superficially. He told me that he was always following the situation at General Aniline but I was not informed about his different endeavors or trying to merge or for acquisitions.

Q Did he indicate to you in any way the financial arrangements he had with any of these companies?

A No.

Q Did he tell you anything about Dr. Sturzenegger's conversations with him about compensation?

A No. He only told me that he knew Dr. Sturzenegger and that he had different talks with him.

Q About compensation?

A Nothing.

Q Did you talk with Dr. Sturzenegger at any time?

1443

A Not at all. Not one moment.

Q What conversations did you have with Mr. Schmitz about compensation during the first meeting with him on October 26, 1958 in Zurich?

A First of all, I was very agreeably surprised because Mr. Schmitz told me that he offered his help for our sake, for justice's sake, for the reestablishment of the family prestige, that he did not -- wasn't interested in remuneration.

Q What did you tell him, did you tell him you would compensate him?

A I told him that, as his principal was that he should get back General Aniline. Well, in this case it would go without saying that if that was a justified claim from his family side, from his own side, they would certainly be honored and that also for him, that would certainly be a place of honor for him in this General Aniline fight.

Q Did you tell him anything about payment of funds, actual money?

A From his side?

Q Yes.

A No.

Q There was no discussion?

A There was no need because he didn't ask for it.

1988 Q Did you tell him, if he was successful that you would pay him something?

A Yes, I told him if he would get General Aniline back then certainly for you there is a job and the possibility to work for us, that means for General Aniline, but no figures, no percentages were mentioned; it was just compensation for his family because he said he was not at all interested in money at this moment.

Q You had a number of further meetings with him in the early part of 1969, did you not?

A Yes.

Q And you sent him frequent letters, did you not?

A Yes.

Q And asked him to do various things on behalf of Interhandel, did you not?

A Yes.

Q And he made several trips to Zurich?

A Yes.

Q And wasn't it evident that he was spending all his time in working with Charles Wilson in reporting to you, drawing up papers and all that sort of thing?

A As soon as Mr. Charles Wilson accepted the trusteeship -- during October which was his first visit, and the 1445 meeting in Paris we got several letters from Mr. Schmitz. I don't know if he dedicated his whole day's work to the Interhandel business but we had quite a correspondence.

Q Was there promised a payment at any time in Zurich?

A No.

Q How about in Paris?

A In Paris, Mr. Wilson came to me, Mr. Charles Wilson, and said that he wouldn't take a fee. He would only ask me to make compensation for his eventual expenses to pay the expenses and the fee of Mr. Spofford and that he felt that Mr. Schmitz could be useful to him as a sort of go-between, as a sort of personal secretary and that he would like to have for him compensation, and we agreed on \$2,000 per month.

Q You agreed on it at that time?

A Yes, with Mr. Charles Wilson.

Q And did you begin to pay him at that time?

A Yes, we did immediately.

Q Immediately?

A I think so, yes.

Q Isn't it true that you did not pay him anything until October?

A I don't know if the payments were including also the month before. What I don't remember any more.

Q Isn't it a fact that the discussions in Zurich and
2445 Paris were the matter of compensating him if he could persuade Charles Wilson to become your trustee?

A Not at all. There was never a question that there would be a fee or compensation for convincing Mr. Charles Wilson to take over.

Q You considered that a very important matter, did you not?

A Certainly, we thought that Mr. Charles Wilson would be a very useful trustee for us.

Q And you thought you could get his services free and not have to pay anything to Mr. Schmitz either, is that the idea?

A Mr. Schmitz never asked for a thing like that and we considered this not at all as an obligation to pay something for convincing Mr. Charles Wilson, because in this moment

I didn't even know how close was the relationship of these two gentlemen, and how often Mr. Charles Wilson was already working for -- in connection with General Aniline.

Q What do you mean by that?

A We didn't know that Mr. Schmitz was already in close contact with Charles Wilson -- or I didn't know.

Q You mean you found out later that in the previous year Dr. Sturzenegger had been attempting through Mr. Schmitz to obtain Mr. Wilson's services, is that it?

A I found out only when the lawsuit began. Before I didn't even know it.

Q Well, what are you suggesting, that Mr. Wilson had already agreed to represent Interhandel?

A No, no, but that he was already close to what theoretically belonged to Interhandel, that means General Aniline.

Q Have you heard since that Dr. Sturzenegger and Dr. Frey were attempting to obtain Mr. Wilson's services?

A I learned that only when the lawsuit began.

Q You have heard that then?

A Not before.

Q Dr. Sturzenegger had the largest single interest in Interhandel at that time up until June of '59, isn't that true?

A No, he had not the principal interest anymore when the banks came in; I had nothing to do with Mr. Sturzenegger,

had no talks with him. He obviously resigned when he came onto the Board of Interhandel.

Q I am talking about a stock ownership.

A Stock ownership was a minority and as soon as we were in, we bought him out of all of these shares.

Q When was that, in June of '55?

A I think so. In '55 -- end of '55 or beginning of '56. He bought him out end of '55 or beginning of '56 but he was -- he did not play any role anymore in Interhandel.

Q Can you suggest any reason why he, through Dr. Joffe, was attempting to get Mr. Wilson to represent Interhandel, in the winter and early spring of '55-'56?

A No, sir, no. They never had contact with us about this.

Q Now you say that there was no discussion of any compensation to Mr. Schmitz, either in Zurich prior to the Paris meeting or at Paris. I read you from your letter to --

MR. WILSON: Is that a fair question? I don't believe it is.

THE WITNESS: I told you that there was a promise.

THE COURT: What's the question?

MR. O'DONOGHUE: Was there any agreement to compensate Mr. Schmitz made in Zurich?

THE WITNESS: There was a promise that if we got back CAF, there would be a legitimate claim from the family

members of the family Schmitz. Certainly we would honor these claims and certainly there could also be a possibility to compensate him, giving him a job or using him as a go-between man between the Swiss owner and the General Aniline Company.

BY MR. O'DONOGHUE:

Q I will read you from your letter of August 30, 1936
1443 to Mr. Schmitz, in which you say:

"Already at the occasion of our meetings in Zurich and Paris, I told you how much we appreciate your assistance and that we entirely agree to hold at your disposal certain sums as a compensation for the time you spend in this connection."

Do you remember that?

A Yes.

Q And had you paid him anything by that time?

A I don't remember.

Q And had there been any agreement as to the amount he would receive?

A The first agreement was taken in Paris with Mr. Charles Wilson, \$2,000 per month.

Q Then how do you account for the fact that in your letter of August 30 you say, "I therefore should like to propose to you, in agreement with my colleagues of the Executive Committee, for the present period a monthly retainer of \$2,000 and to re-examine the situation when our plans have further proceeded?"

A Yes.

Q Is that the first time you received of \$2,000 was that?

A Certainly it was our only reason to compensate him in the amount he wanted in any form.

Q And when was that?

A When he returned to the States, after his first visit to Paris.

Q And did you pay him for the period from October --

A I don't know but I think so.

Q May I suggest that the first \$2,000 payment was as of June, 1960 and was not made until October of 1960, would that refresh your recollection?

A It could be, I don't know.

Q And that no compensation was paid to him for any services performed between October of 1959 and the end of May of 1960, isn't that true?

A Could be true because Mr. Schmitz said that he works for honor and for justice's sake and not for money.

Q Now you knew he was not a man of means at that time, did you not?

A I didn't know. Mr. Charles Wilson told me that in Paris.

Q Did you know that he had a large family?

A Yes, after Paris I knew it.

Q And did you not suppose that this was the purpose of his interest in order to earn money?

1451

A No, not at all. He could have told me that. He never did.

Q What did you indicate to Mr. Schmitz his services were to consist of after the trusteeship was established?

A I talked with Mr. Charles Wilson and he said that he could use Mr. Schmitz as a personal go-between. He couldn't always undertake the travel to Switzerland, that he would consider him as a personal secretary, and I was in full agreement.

Q Was his function to keep Mr. Wilson and Mr. Spofford informed?

A Informed as the man who comes and informs us and takes our considerations; but practically he worked only with and for Mr. Charles Wilson because we had during these 14-15 months nothing to do with the American side. It was all up to Mr. Wilson and Mr. Spofford.

Q Do you remember your language in this letter:

"At the present the main item will definitely be to help Messrs. Wilson and Spofford in their endeavors and keep all information at their disposal?"

A Yes.

Q You instructed him to do that?

A Yes.

Q And he did do that, did he not?

Q Yes, he wrote us very often letters, mostly about general ideas and there were a few interesting results of investigation.

Q And you did send us a letter of appreciation for those contributions, is that right?

A Certainly.

Q And you told him of our appreciation?

A During the first months certainly. When nothing came and when nothing happened, we were beginning to feel frustrated and disappointed.

Q Did you tell him that?

A Oh, certainly he was informed when he came to Zurich that we waited impatiently and began really to ask ourselves what could happen. Especially after the election.

Q In this letter of August 30, you say:

"Quite a different tack might arise if and when the first decisive steps in the first direction we all have in mind will be accomplished. I am fully aware at such a time perhaps a much further reaching cooperation will be required."

What did you mean by that?

A That when the agreement would be reached -- that means, when we would get back General Aniline -- that we could cooperate in the form that Mr. Schmitz could have a position in the Aniline as his father had, or along those lines.

Q Isn't it true that when you proposed \$2,000 a month, he replied that that would be accepted only as an interim payment on account?

A I don't think so, no. He accepted these \$2,000. It was in the presence also of Mr. Charles Wilson.

Q Do you remember his letter of September 19 to you in which he said --

THE COURT: Plaintiff's 78.

MR. WILSON: What exhibit?

MR. O'DONOGHUE: From Robert Schmitt to you:

"Such payments are made available as initial payments on account of interim payments to Messrs. Spelford and Wilson on your behalf. The foregoing however will in no way compensate for any services rendered by me or any capital interest to be created in my behalf or created in services over a period of years."

Do you remember that?

THE WITNESS: Yes, I remember that.

BY MR. O'DONOGHUE:

Q In other words he told you that he would accept that as an interim payment on account but it would not be full compensation for his services?

A Yes, and I considered the full compensation would come if we got back General Aniline and if he would then have a job there.

Q Did you say anything to him in reply to his letter?

A I don't know what I replied, but I told him that verbally in Zurich and in Paris.

Q When did you see him in Zurich after this?

A Well, it was when he was there like in October in Zurich.

Q No. No. I am talking about after this letter to him of September 19, 1950.

A I don't know. He was quite often in Zurich, I don't remember.

Q But you did not reply to this letter and say that this would be the terms on which his services were being accepted, did you?

A Well, it could very well be that we talked about it and that I repeated what I told him, but I don't remember that I had any direct talk with him about any compensation percentage-wise or otherwise after getting back General Amelio.

* * *

1455 MR. O'DONOGHUE: You received a detailed report on September 19 -- I mean a letter was sent on the same date, September 19, which is Plaintiff's 75?

1456 THE WITNESS: Could I see this letter, please?

MR. O'DONOGHUE: Yes, sure.

THE WITNESS: (Reading) Yes, it's certainly possible that these letters reached us because Mr. Schmitz wrote us very often those letters.

BY MR. O'DONOGHUE:

Q What I am trying to find out was whether your reply to those two letters was included in this one letter of September 22nd?

A Yes, the last phrase is, "With regards to your personal desires I will write to you at the next occasion again."

Q This letter has been translated as the first sentence. I am obliged to thank you for your writing of the 19th of this month. Would the German sentence that you wrote -- "schreiben" -- could that be the plural?

A No, that's a singular word. This means for your letter, one letter of the 19th.

Q And you don't know which --

A It must certainly be the long letter because I answered him to these remarks that he made on this long letter.

Q It's your suggestion that the language "relative to your purely personal wishes, I shall allow myself to write to you again at the next opportunity?"

1457 A Yes, because he had personal wishes there too in this long letter.

Q I said. Well, didn't I want him to find out, whether your letter of the 25th was in answer to mine or not?

A To our best knowledge, no. I could only recall the long letter.

Q Did you ever receive his short letter then?

A I don't know.

Q You have no recollection of doing so, have you?

A No.

Q Have you, Doctor?

THE COURT: He said no.

MR. O'DONOGHUE: I did not understand. I am sorry.

BY MR. O'DONOGHUE:

Q I show you what has been introduced in evidence as Plaintiff's 70, and ask you if you have knowledge of that?

A (Reading) No, but certainly I was informed.

* * *

1150

MR. O'DONOGHUE: My question is whether he was familiar with the letter and I believe his answer was to the effect --

THE WITNESS: May I ask you what date it is?

MR. O'DONOGHUE: Yes, it's October 25, I think, 1900. Maybe if I looked at the original I could tell better.

THE WITNESS: Wasn't that the compensation for the month he worked for us before the Paris meeting? It could be.

MR. O'DONOGHUE: Yes, it's October 25.

Dr. Wehrli has evidently signed that. Who is this other signature, can you tell us?

A THE WITNESS: Mr. Wehrli and Mr. Oberhaenski who at this time was sub-manager of the bank.

BY MR. O'DONOGHUE:

Q And that letter reads:

"Dear Mr. Schmitz:

"According to instructions received we have credited your account with \$10,000 value on October 25, 1960, being the equivalent of five times \$2,000 for compensation of your holding your knowledge and time at the disposal of the matters which is of great value to the interest of the protection of private property and of the defense of Swiss interests abroad, June till October 1960."

Is that what he was being compensated for at that time, then?

A These were probably \$2,000, five times or it was a compensation for the months before the Paris meeting. I don't remember.

Q Well, it says from June till October.

Q June to October, all right.

Q We were talking a moment ago about the long letter of September 19, 1960, which is Plaintiff's Exhibit 75. And

do you remember Mr. Schmitz saying in that, "The decisions made in Paris including such obligations as were created and assumed by all came about more impelled by obliging notions in the best interests and even for the allies principals and the allies, and were assumed in view of the need to recognize the interest and predominance of these allies etc."

Q Your letter of September 1941 was in reply to that, was it not?

A Yes, it was.

Q What did you understand as obligations created at the Paris Conference?

A To work for the interests of International, and to all considered Mr. Schmitz as a crusader for truth and justice doing it for honor.

Q Doing it for what?

A Honor and for justice. He always reflected the mood of this opinion in all his letters.

Q That's not your purpose, however. You were doing it for money.

A I never considered that Mr. Schmitz did anything for money. I always considered that he did it for sentimental purposes. That's what he always underlined.

Q I am asking you what your purpose was. Yours was not a sentimental purpose, was it?

A Our purpose was to get back the General Aniline Company.

Q And that was a --

A That was a business proposition and a lawsuit. But it had also, I agree, a moral side.

Q So you were fighting for morality, too?

1961

A Certainly.

Q And you enlisted his cooperation in that fight?

A Yes, sir.

Q What honor was involved that he needed to justify?

A His father's honor.

Q What was the matter with his father's honor?

A He told me that his father was unjustly treated and dishonorably treated and that he would like to restore the prestige of his father.

Q He told you that his father had lost his fortune and wanted to be restored to that, didn't he?

A I don't know. He never gave me any details.

Q His father -- no one ever accused his father to your knowledge of acting dishonorably, had they?

A I don't know.

Q What need was there to vindicate honor that you could --

A Well, because I thought his father was dismissed and was treated in a bad way.

Q By when?

A Probably by the American Bank Note Company, confiscating, General Sullivan's picture he had and it was of German initials and -- German.

1839 Q Did you in 1937 or 1938 or 1939 in the interests of the cause?

A He never lived in the interests of the Swiss -- his friends.

Q In 1937?

A I never knew about that.

Q You did not know that he --

A No, not at all.

Q You did not know that he had the promises to vote all the International chapters?

A Some he had probably, but I didn't know that.

Q I see.

MR. O'DONOGHUE: Will you indulge me a moment, Your Honor?

May I have Plaintiff's 100?

BY MR. O'DONOGHUE:

Q Dr. Schaefer, referring to Plaintiff's Exhibit 100, a letter from you to Mr. Schmitz, dated May 29, 1961, do you remember telling Mr. Schmitz that, "In this first phase you have doubtless very great personal merits and I don't want to fail to thank you for your extremely valuable collaboration."

Do you remember that?

Yes, we always tried to be very friendly and very
1463 polite with the gentleman.

Q And very truthful. Did you try to be very truthful?

A Oh, certainly.

Q Well then, this was true, was it not?

A He did a good job in the beginning. He brought us
Mr. Charles Wilson. He acted for Mr. Charles Wilson. He
recognized the services and paid for it.

Q That's what you figure you have done in this connec-
tion that you have rewarded him adequately?

THE COURT: Did you answer that question?

BY MR. O'DONOGHUE:

Q -- that you have rewarded him adequately?

A Oh, certainly. He agreed to it and Mr. Charles Wil-
son said he thought that very adequate.

Q I am not asking you what Mr. Charles Wilson said.
I am asking you your opinion.

A I was of the same opinion, especially after the trustee
agreed on that.

Q What is your opinion?

A That it was a justified and reasonable payment.

Q How much did you pay him?

A \$2,000 a month.

Q For how long?

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A. That is in the document. I think for about 10 months or 15 months or two years. It ended at the end on additional points, even after it was finalized.

Q. Mr. [redacted], could you tell me -- was Union [redacted] [redacted] in [redacted] [redacted] 1959 [redacted]?

A. Yes, but one of the main work items are one of the most market the [redacted] the stock market.

Q. Well, now, you have to explain something to us I believe, Doctor, because American banks don't act in quite the same way, were you acting in effect as a stock broker?

A. Yes.

Q. And you were buying and selling --

A. Yes.

Q. -- not only on your own account but for customers?

A. Yes, for customers especially.

Q. For customers especially?

A. Yes, but we can do it for our own account, too.

Q. During the period of the end of 1959 and early 1960, was there any general trend in the stock market?

A. Unfortunately the Interhandel shares were always a little bit speculative shares. There were a lot of people buying and selling, thinking an arrangement can be found or settlement could be reached. We had during the four years I was on the board, very stormy assemblies, General Assemblies, we were always accused to be not active enough. When Mr.

Charles Wilson came in, the hopes flared up a little bit. When the Republicans came after the elections, the whole enthusiasm went down. It was a very disagreeable affair and a very stormy one.

Q Let me ask you this: It reacted rather sensitively to good or bad news, was that it?

A Yes.

Q During the spring of 1960 or the end of 1959 was there any good news related to Interhandel?

A Public opinion considered the trusteeship of Mr. Charles Wilson as good news.

Q But that was kept secret until June of 1960, wasn't it?

A Until he accepted.

Q So, it was prior to that that that was entirely secret and the public did not know about it, did they?

A No.

Q You didn't leak any information to the public?

A No.

Q But did Union Bank continue to buy up shares during this period?

A No, we just tried, all the banks, to regulate a little bit the market.

Q What do you mean, "keep it steady"?

Q Now, I suppose that the fact that someone had sold
 on 11th Street, and that the fact that the stock was
 sold on 11th Street.

BY THE QUESTIONER:

Q Now, as I understand it, I don't know whether you
 have testified to this -- but you said to Mr. Sturman for
 for 30,000 shares of the stock, at 3000 shares?

A I think so, or 3000 or 3000.

Q And that was purchased in early 1950?

A I don't know the exact date.

Q But what was it approximately?

A Approximately, I think.

Q Do you know what the stock was selling for on or
 26, 1950?

1199 A No.

Q Would 3,415 shares be about right, the right amount?

A Could be; yes.

Q How much stock did Union Bank own at this time?

A I don't know the exact amount, but we certainly
 had shares, with friends, together with other banks, we
 had about 15 percent of shares with the other company.

Q You say that you did not particularly buy the
 stock during the Spring of 1950?

A No, but we were glad that Mr. Sturzenegger was willing to sell because we thought that those shares should come into solid hands, and that's why we paid a little bit more than the stock exchange price, because it was a large amount.

MR. WILSON: If your Honor please, may I raise the question of relevancy and ask that your Honor be informed, and I be informed at the bench, of the purpose of this examination?

THE COURT: I think so.

(AT THE BENCH:

MR. O'DONOGHUE: I want to demonstrate the great value that the obtaining of the Trusteeship had for Irwin Handel by practically doubling the value of the shares, and that's why I hoped to elicit---

MR. WILSON: What?

1479 MR. O'DONOGHUE: That Robert Schmitz is to be compensated for obtaining that trusteeship, and that if the values doubled, and represented---

THE COURT: Is there any claim of that in this case? Is it asserted in the complaint?

MR. O'DONOGHUE: What?

THE COURT: What you just stated.

MR. O'DONOGHUE: That he promised to pay him for obtaining the services of Mr. Wilson, and so we want to show

there is not a great deal of value to Interhandel in a liquidation.

MR. WILSON: I don't believe so at all. I don't see the relevance, in a liquidation, you will have to watch the way Mr. Schneider does this. In so saying that this was part of the 5 percent consideration.

MR. SCHNEIDER: I suggest you not talk so loudly, Mr. Wilson.

MR. WILSON: Is this part of the 5 percent consideration or is this some equitable claim?

MR. SCHNEIDER: Equitable claim.

MR. WILSON: What have you done with the 5 percent claim? Is it still in the case?

MR. SCHNEIDER: Yes, it's still in the case.

THE COURT: I will let it in. I'm not sure of the relevance. I am not sure of the effect it will have on the Court's ruling.

* * *

BY MR. SCHNEIDER:

Q Dr. Schofer, if I suggested that on October 26, 1959 that the quotation for Interhandel on the Zurich Bourse was 3,415, would you consider that approximately correct?

A Could be possible. I don't know.

Q And that by May 3, 1960, the price went to 3,750?

A It could also be. Yes.

Q And there was no reason that you know of, aside from the possibility of Mr. Wilson's accepting the trusteeship that it would have increased to that?

A Probably the stock exchange was good.

Q Then, there were jumps in the value of the stock upon the announcement of Mr. Wilson's acceptance, going up on June 14 to 5,300 Swiss francs.

A It could be.

•1401 Q Do you have any recollection of this?

A I didn't bother about the stock exchange prices.

Q You did not?

A No.

Q How many shares were outstanding at that time?

A As I told you, about 110,000 shares.

Q So, those 110,000 shares had gone up approximately from 3415 to 5300 in that period of time after the announcement?

A Could be. Afterwards, they went back again. As I told you, there was heavy speculation all the time. All reviews (good news) were exaggerated and all bad news, too.

Q In other words, it went up about 2,000 francs in that period?

A Could be. I don't know.

Q And the 1st -- 2,000 shares to roughly 15000

A About 1450, yes.

Q What is the price of the

A 4.35.

Q Total little more than -- I mean about 400,000

A Well, yes.

Q 2,000 shares at 4.35 to 4.50, something like that.

1402 Q To what is the value of International
Inc. based on -- if we divide 10,000 by 4.35, we get
about 2,300 million, don't we?

A In 1950.

Q And the value of Int. started then to increase
and that on the operations of certain of the services of
Int. Union or service?

A I don't know if this was the only reason. Perhaps
the stock exchange in itself was stronger. But certainly,
this played quite an influence.

Q You don't know of any other reason?

A No, I did not bother about stock exchange prices.

Q But you were buying and selling all the time?
You were acting as broker, weren't you?

A We had to. We were the only bank who really was
in these things and had taken over the responsibility, trying
to get it to a good end.

Q And you were advising your clients when to buy and when to sell?

A Could be. Any broker does that.

Q So, you were keenly aware of the stock exchange prices, were you not?

A Most people kept it because they expected to get a much better price when Interhandel would get General Aniline back.

1483 Q The price, the value of Interhandel shares at that time upon the announcement of Mr. Wilson's acceptance was then something like 5300 by 110,000 shares, is that right?

A Could be.

Q 5300 in dollars is what, about \$1200?

A About \$1100 -- about \$1200.

Q \$1100 or \$1200. So, the value of the Interhandel stock at the time of Mr. Wilson's acceptance was almost precisely the amount that you actually finally received for that stock, isn't that true?

A About the same, yes.

Q And so that if anyone had decided to sell their Interhandel shares at that time, they would have received the same amount of money as if they had held on for final settlement?

A Yes, they were---

Q Didn't that do pretty

A Yes.

Q Didn't you want to get a better deal on the stock? Didn't you want to get a better deal on the stock? Didn't you want to get a better deal on the stock?

A Yes, for the stock. I didn't want a better deal on the stock. I didn't want a better deal on the stock. I didn't want a better deal on the stock.

Q Well, if you didn't want a better deal on the stock, why did you want to get a better deal on the stock? Didn't you want to get a better deal on the stock?

A I don't know. I don't know. I don't know. I don't know. I don't know. I don't know. I don't know. I don't know. I don't know.

Q Well, would it be needed to be a good deal better than the stock?

A I don't know. I know only that in between the time that the stock went down and the time that the stock went up, it was back to \$4,900 only.

Q Meanwhile, the value of Union ... it was going up dramatically too, wasn't it?

A All the bank shares went up. We were, unfortunately, always a bit connected at the Stock Exchange with International stock, which was very disagreeable to us.

Q Did your trading in the Interhandel stock contribute to the rising value of Union Bank stock?

A Could be, but this was purely speculative.

Q And so, between October of 1959 and October of 1961, the value of Union Bank stock went from 2,500 Swiss francs to 5,230 Swiss francs on October 30, 1961? Does that seem correct, Dr. Schofer?

A Yes. Could you perhaps consult your files and see that in the beginning of '62, our shares were down to 1965 2,900 or 2,200. There was quite a speculation going on. We had this recession and this slump at the Stock Exchange. If I recall, it was at the beginning of '62.

Q That it went up?

A No. It went down first and afterwards, slowly it recovered and never reached in all these last seven years the height of '61, beginning just the first month of '62. Then, afterwards, there came quite a crash.

Q In 1962?

A Yes.

Q Well, what I am asking you, was the rise in the value of Union Bank shares in that period--

* * *

BY MR. O'DONOGHUE:

Q Did the rise in value of Union Bank stock result from trading in Interhandel shares during this period?

1487

Q I thought you told us a few moments ago that it was a business matter as far as you were concerned?

A When we tried to help Interhandel towards the American Government, certainly it was a question of business, of ethics and of morals, too.

MR. O'DONOGHUE: I have no further questions.

* * *

CROSS-EXAMINATION

BY MR. WILSON:

Q Dr. Schnofer, one of the claims of Mr. Schmitz against Interhandel, in this law suit, is that you promised to pay him 5 percent out of the avails of the recovery from the United States Government in the General Aniline case, payable when the avails were available, solely for procuring Mr. Wilson -- Mr. Charles Wilson -- to assume the trusteeship.

A I never did a thing like that.

Q He says that you did it in Zurich in October of 1959 while he was there. Did you, sir?

A I did not.

1488

Q He said that on other occasions in Zurich you did it. Did you, sir?

A No, sir.

Q He said that prior to going to Paris in 1960, that he was in Zurich and you repeated it, sir. Did you?

Q. Did you?

A. Yes, I did. I did not read the whole of it, but I did read the first sentence.

Q. Did you?

A. I did not.

Q. Is it your contention that the first sentence of the first paragraph on page 109 of the document is a misstatement?

A. I did not.

Q. Did you take any action which was of a similar nature?

A. No.

Q. Now, Mr. Hoffert, should you Principal's Exhibit 109 and to read from the first sentence of the third paragraph, and had you offered the following:

"In this first stage, you have undoubtedly very great personal merits, and I would want to call to your attention for your extremely valuable collaboration."

He did not read you the rest of the paragraph -- and I want to ask you in the form of a question, if what I am about to read you in this document, 109, dated May 20, 1961, from you to Mr. Schultz, reflected your sentiment and viewpoint upon this subject:

"Should we be able to liquidate the whole question, GAP, within the next few months due to the efforts of the Trustees, respectively Mr. Hoffert, of course, would be one to co-operate in a co-operation."

of the Trustee with a final payment for the work they might have done after June. But at the present, it really looks as though we have to come to terms directly with the competent authorities with the help of our attorneys. Since our General Meeting is very sensitive in regard to paying fees if they are not justified for achieved results within a reasonable space of time, I am asking you kindly to understand this limitation of your fee."

Did that reflect your thinking at that time, sir?

A Entirely.

Q Does it still reflect your thinking?

A Entirely. If I would have promised a fee or a commission in percentages, considering the sums involved, I would have had to have had a written agreement, have to submit it to my colleagues, and to the Board of International because it would have meant millions of dollars. I could not have done a thing like that at all.

* * *

1490

THE DEPUTY CLERK: Defendant's Exhibit Number 64 marked for identification.

* * *

BY MR. WILSON:

Q Dr. Schaefer, I show you Defendant's Exhibit for identification Number 64,---

BY MR. WILSON:

Q Dr. Schaefer, showing you 74, which is the same document without the notation, do you remember what your reaction to that was when you received it?

A Yes, I know what remark I made.

MR. O'DONOGHUE: Your Honor, I object to his reaction.

THE COURT: He may testify to his reaction, but he may not testify as to the remark he made.

* * *

1402

Q What was your reaction?

A My reaction was, I did not understand this last paragraph. I did not understand his last paragraph. I did not know what it meant, and I thought we are absolutely free to honor or make payment in case of success, as we see fit to.

Q Thank you, sir.

MR. WILSON: May I have 64? That is, Plaintiff's Exhibit 64? Mark this with our next number, please.

THE DEPUTY CLERK: Defendant's Exhibit Number 65 marked for identification.

* * *

1404

MR. WILSON: May it please the Court, Number 65 for identification is a copy of Plaintiff's Exhibit 64 with a notation by Dr. Schaefer at the bottom. I will not go through it---

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

* * *

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

Q. (Speaking)

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

* * *

Q. Now, in 1942, did you have a meeting with Mr. O'Donoghue?

A. Yes, I did. I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census, and I met him in the office of the Chief of the Bureau of the Census.

BY MR. WILSON:

Q Dr. Schaefer, I show you Defendant's Exhibit 19, a letter from Mr. Wilson, Charles Wilson, to you of August 4th, and Mr. O'Donoghue and I have just agreed that Number 64 of Plaintiff's was the enclosure. Would you glance over both of those, please, sir?

A (Reading) Yes.

Q In the second page of Number 64, the enclosure, will you note the paragraph that says: (And this is Mr. Schmitz to Mr. Charles Wilson):

"I submit that the consideration for such services from July 1st, 1960 to December 31, '60 be \$25,000 plus expenses."

Did you accede to that, or not?

1426

A Well, again, we got this letter from Mr. Charles Wilson saying that he did not consider, and that he did not think useful to consider Mr. Schmitz as agent of him or Mr. Snofford. Therefore, we didn't feel obliged at all to make special arrangements or effectuate special payments for services which in our opinion were included in those \$2,000 payments.

Q In other words, sir, the result of the communication from Mr. Wilson and the transmittal into Mr. Schmitz' letter was that you paid him \$2,000 a month?

Q Now, is this all the evidence of Mr. Wilson?

A Well, I think, yes, because Mr. Wilson said that he was not in the office of the National Association of the American People.

Q Well, I told you that Mr. Wilson had been a member of the National Association of the American People, that he had a lot of friends there, that he was very well known in his community, and had a lot of influence, and could certainly be a very useful person in order to get out General Anthony.

Q Now you are in Paris, and you met Mr. Wilson for the first time, is that right?

A The first time.

1877

Q What did he say about his affiliation with the National Association of the American People, that is, he was in the office?

MR. PROSECUTOR: Was this in the presence of the witness? I think it should be limited to what, your honor.

MR. WILSON: That is a new one on me.

THE COURT: I think we have gone frequently in the course of this trial against that rule. I will overrule your objection.

MR. WILSON: I will accommodate him this time.

Q In the presence of Mr. Schmitz, in Paris, what did Mr. Charles Wilson say about his political and social relationships with President Eisenhower, Dick Nixon and members of the Cabinet?

A He said his relations were excellent and on a very personal and intimate basis.

Q Did he make the representation to you as to whether the trusteeship should, if he assumed it, should have fruition while the Republicans were in control?

A He said that now the situation was very favorable because he had these relations, and that he should, or could, proceed without hesitation to begin these negotiations.

Q Did he speculate about the outcome of the election?

A No, we didn't think anything-- After luncheon, 1428 I remember that we talked, and he said that the Republicans probably would win the elections.

THE COURT: Was that the 1960 election?

THE WITNESS: Yes.

* * *

1437 BY MR. WILSON:

Q Doctor, at the recess, I was asking you to describe to his Honor the evolution of your thinking from 100 percent return to a 50 percent settlement. But, lest I forget it, let me get in several formal matters first and come back.

Now I am going to ask you a question of interpretation.

Q Is it not correct that in 1911-12, it had a net income of about \$5 million, and \$1 million was paid to the Government?

A Yes, that is correct. I am going to ask you over the years-- well, I am going to ask you over the years you said that was a mistake; and I am going to ask you what it is now. Is it a mistake, in some way, the error in the earlier between the 100 and 100 or 100 points?

A Yes, in several instances.

Q And your bank, which, in its own right, that authority of the Government?

A We have always been there since our part of the stock of International, which consisted of about 15,000 shares, and about 10,000 and 15,000 were held by the 100 percent of stock, and others, also held, so that about 10,000 shares were held by the 100 percent of the stock and the 100 percent of the stock.

Q You mean, these people, your bank and so forth, but they were not and did not participate on that?

A Yes, we kept that and did not participate on that.

Q Now, let me get back to my question -- and I will repeat it. Would you explain to his honor the evolution of your thinking with respect to the 100 percent return at the beginning and gradually down to the 50 percent settlement?

A When Mr. Charles Wilson took over the trusteeship, we considered him, and also Mr. Schmitz, as sort of crusaders, fighting for us getting back General Aniline. We were very grateful, hopeful, but from the beginning, a little bit skeptical because we knew that the lawsuit could go on indefinitely.

And after the election in the United States, we felt that the influence and the possibilities of the trustee would eventually be considerably reduced. And at the same time, we were influenced by the fact that there was pending legislation in Congress about the sale of General Aniline which would have made it necessary for our government to step in -- that meant a fight against the Americans, the United States Government, which, naturally, for everybody would have been highly disagreeable, and therefore, we felt more and more that we should come to an agreement, especially also because the shareholders of Interhandel and public opinion in Switzerland were very nervous and pestered us with reproaches against us, and always said, "Nothing is forthcoming."

Then, we had the disagreeable fact that the other two big banks went out of the Board, and we were quite alone to fight this lawsuit. And all this, after these first twelve months, induced us more and more to be skeptical about the possibility of getting General Aniline back in its entirety.

Q. Now, about the evidence, did you not very much
 expect that?

A. With respect to the evidence, did you
 have any idea what evidence was going to be? Or any really
 serious evidence, from his side?

A. I had no idea. From the evidence side, but during
 the whole year I felt that the real work was especially
 done by Mr. Spafford.

Q. On June 24, 1912, did you discuss
 with Mr. Spafford and Mr. Spafford and Mr. Spafford
 address of "Jackson"?

A. Yes.

Q. And you referred in there to "let's rush negotiations?"

A. Yes.

Q. That confined entirely, as a person, to your
 knowledge of stockholders' meeting?

A. Yes.

Q. Did you by that time had any contact with Mr.
 Spafford on the 24th of June, do you think? Here it is
 (look at that). It is June -- What is that number, June 24th?

A. June 24th.

Q. Yes.

A. Yes, it was possible that I already had contact,
 but only with Mr. Spafford who said that he would do his best

to ask his friend, his client, about this eventual possibility of a meeting.

Q In corroboration with your testimony that you were keeping Mr. Spofford informed of things, I show you Number 58, and ask you if that is a letter which you despatched to Mr. Spofford on or about the 21st of July, and did you refer to the subject matter of the Prince, without name, in that?

A Yes, indeed. This is a letter I addressed to Mr. Spofford telling him that we had been able to make a new contact with one of the highest authorities; but as I had no meeting day fixed -- I was not yet very sure -- and I could not give him any names or any more confirmation.

1505

MR. WILSON: Give me Plaintiff's 143 and 144.

BY MR. WILSON:

Q The following month, Dr. Schaefer, did you despatch Plaintiff's Exhibit 143 to Messrs. Wilson and Spofford separately, with regard to the same subject matter?

A Yes, I did. I wished to do nothing behind their back, and to keep them informed that these possibilities are slowly taking shape. I already knew at this date that the person in question would try to introduce me to his brother-in-law.

Q Did you receive a letter from him, dated 31, 1967, from Dr. Gerhard Helber, dated 31, 1967, dated 31, 1967?

A Yes, I received a letter from him.

Q Now let's continue, Dr. Helber, when was the letter sent to you?

A It was sent to me in the office of the United States Attorney, New York City.

Q Thank you.

MR. WILSON: Now, Dr. Helber, this letter, it was given to you on 9-6-67 by Dr. Helber's deposition. Would you put your blue sticker on there with 11-68, please?

THE COURT: Defendant's Exhibit 62 marked for identification.

MR. WILSON: And the next item is with its next number, please.

THE COURT: Defendant's Exhibit 66 marked for identification.

* * *

BY MR. WILSON:

Q I show you this, Dr. Helber--- After Dr. Helber had visited you in Zurich on the 6th of September, and you had disclosed to him more details, did you receive from him Defendant's Exhibit for Identification 62 dated September 15th?

A Yes. That was immediately after his return to the United States when we talked and when I informed him. He was impressed, but as I felt also a little bit disturbed, he said that, "This is quite a difficult thing for the Attorney General to take a decision, or to talk about the possibility of a settlement, because he perhaps was not very well informed about the legal situation, and that he would be rather reluctant to be a party to these deliberations."

But in his letter, he encouraged me and said that we should do our utmost to have this contact because he, too, felt the danger of the pending legislation in Congress.

Q Dr. Schaefer, to save a little time, I turn to the second page, and in corroboration with what you have just said, would you read to his Honor the third full paragraph on
1507 that page from Mr. Spofford?

A The third paragraph?

Q Yes, please.

A This one? "I should like also to take this occasion to report on my talk with Mr. Wilson after my return from Zurich. I disclosed to him in the greatest confidence, the reasons for which were immediately apparent to him, the proposals which you had told me of in Zurich. He felt, as I did, that the proper course was to await the results of the initiatives you had taken through other channels. In the light of developments, and in consulta-

...and you, in April 1961, he did not know that, if anything, he might contribute to a solution of your problem, rather than the other way around. The initiative of the problem was not his. It was yours, or, as I think he would say, it was yours. I told him you are not to be concerned with the development."

Q Was you in to this to see Mr. DeLoach's Exhibit for Identification (C)?

A Yes.

MR. WILSON: Would you mark this with the name number, Mrs. Abbott, that it was at the Stafford deposition?

MR. WILSON: Defendant's Exhibit (C) marked for identification.

1510

MR. WILSON:

Q You were shown yesterday a copy of a cable from Mr. Stafford on or about October 6, 1961, a copy of this Mr. Stafford said that you could have a meeting with the Attorney General.

A Yes.

Q Was that followed up by Exhibit (C), which is a letter of the same date?

A Yes, it is.

Q On the third page of this letter, under the trouble number 2, do you find that Mr. Stafford is concerned with the representation of the cable to him in the Company?

MR. O'DONOGHUE: Doesn't the letter speak for itself?

MR. WILSON: I'm coming to that in a moment.

THE COURT: Has the letter been offered in evidence?

MR. WILSON: Yes. I offer it in evidence anyway.

THE COURT: It will be received.

(Defendant's Exhibit 63 was
received in evidence.)

MR. O'DONOGHUE: I just think it speaks for itself.

THE COURT: It might help the Court if he read it.

MR. WILSON: This is a long paragraph. If you can see it, would you read the Arabic 2 of page 3 of Number 63 Dr. Schaefer?

1500 THE WITNESS: You want me to read it?

MR. WILSON: That paragraph, the Court says it's all right for you to read it.

THE WITNESS: "2. There has been a change in the past several weeks in the Department's attitude on the sale legislation. Until very recently the Department had taken no position on Senate 760, which is the current version of Senator Kenting's bill, and in fact, took no part in the hearings before Mr. Mack's Committee in the House which were held late in August. Orrick had told me on several occasions, as I had reported to you, that the view at the time was that until the possibilities of settlement had been fully

... I think it would be ... to ... the ...
 ... for ... the ... and ... some
 ... in the ... of a ...
 ... with ... of ...
 ... the ...
 ... in ... of ... and
 ... while ... they were all reasonable, he believed
 the Government was having difficulty in holding the line
 against Congressional pressure for the ... Bill. ...
 ... after ... there was incorporated in a state-
 ... of ... individual views of ... on various
 ... legislation a memorandum from the ...
 1914 "Advocating ... to ... with ...
 by the Attorney General as to its constitutionality. ...
 ... of ... with ... he ... to understand
 that the Department had merely ... the opinion of
 the ... Attorney General on the constitutionality
 of the ... but that the position on the ...
 question was not as yet final. This is not in line with
 the statement of Senator ... in the documents which I
 believe you have been furnished by John Wilson. However,
 I think it is pretty clear that the Department has yielded
 to pressure generated by Senator ... and has made a
 record which will facilitate the consideration of this
 legislation at the next session. This means that negotia-

tions for settlement must be well under way before Congress convenes in January if such legislation is not to become a more serious threat than it has been in the past."

Q That was October 6, 1961?

A October 6th.

Q Now, departing a moment from this sequence of instances in which you were plainly keeping Mr. Spofford advised---

MR. O'DONOGHUE: May I object to this and ask Mr. Wilson simply ask questions.

THE COURT: I think counsel has a right to preface his question with some introductory-- I'll overrule the objection.

1511

BY MR. WILSON:

Q I want to again call your attention to Plaintiff's Exhibit 145, which you say yesterday, a letter of March 27, 1961, from Mr. Wilson to you, and ask whether you depended upon the text of that letter, or some of the text of that letter, as giving you some freedom to act?

A Yes. It was a clear letter in which he stated that if circumstances should change, and that he would feel that his objective could not be reached, or that it would be better to give us back freedom, he would do that immediately.

THE COURT: Dr. Wilson's Exhibit 17 marked for
Exhibit 10 B. n.

BY MR. WILSON:

Q I think you recall that Mr. Spofford was in
Zurich -- I think last week or thereabouts -- the early part of
March or the first of 1962.

A Yes.

Q And he returned, did you receive him on 67
for identification from him -- returned as the British Consul?

A Yes.

THE COURT: This is a letter dated March 31, 1962 from Mr.
Spofford to Dr. Wilson, which I offer in evidence.

1012

THE COURT: Any objection?

MR. PROSECUTOR: No objection.

THE COURT: Without objection, it will be received.

* * *

BY MR. WILSON:

Q I ask you whether the first full paragraph of
that letter encouraged you to believe that you had Mr.
Spofford's acquiescence in Dr. Wilson's letter of March 27th?

A Yes, he did.

Q What did he say?

A "I reported to Dr. Wilson on developments
since I returned to New York, some of which had a bearing

on the schedule suggested in my cable. The program which we had agreed upon in Zurich was entirely satisfactory to Charles Wilson. You will have received by now his letter clarifying his position as to the power-of-attorney along the lines of our discussion in Zurich. I trust that this deals with the matter satisfactorily from your standpoint."

Q Now, with the background of Number 67, Defendant's 67 for identification, which is the letter from which you have just read, and with the background of Plaintiff's 145 which is Mr. Wilson's letter to you ^{of} several days earlier, did you reach a conclusion as to whether you had virtual freedom of activity with respect to the subject matter of the General Aniline settlement?

A I indeed did. I was convinced of it.

Q Did you feel, nevertheless, an obligation to keep these gentlemen informed of your activities?

A Absolutely. I considered them as real gentlemen. They were always absolutely kind and understanding, and I tried to reciprocate and to keep them fully informed.

Q And as you sit here today, do you think you meticulously adhered to that objective, sir?

A Certainly.

After your meeting with the Attorney General, did you go to his office, did you?

A. Yes, I did.

Q. And did you form any opinion as to whether or not the Attorney General was disturbed by the fact that he was the subject of an investigation?

A. Yes. I was very much disturbed.

Q. Did this include some personal contact with the Attorney General at that time, did you, with respect to his office?

A. The contact with the Attorney General was, I believe, all before the investigation that--

THE COURT: Just a minute. Do you have something to say?

MR. CLARK: I object to his request of any conversation to Mr. Wilson or any report of any conversation, and I believe that amounts to.

THE COURT: What do you say?

MR. WILSON: This is either amiable under the principles which we have followed heretofore, or it's a violation in explaining why he made a determination finally to take 50-70.

THE COURT: I will overrule the objection.

MR. WILSON: Go ahead, Dr. Schaefer. You were about to say what your observation or experience had been

with these gentlemen in the Department before you came back to my office.

THE WITNESS: I was quite optimistic in the morning, and when I saw the gentlemen of the Justice Department with whom Mr. Kennedy brought me into contact, I saw that they practically all were very reluctant, saying that they are not at all inclined to talk settlement because they were convinced that their legal position was quite a good one, and that especially Mr. White said he did not see the necessity to begin talks, and it was only the decision of the Attorney General saying that perhaps it was better to have something for both sides, as long as General Aniline was in more or less good shape, and that it was not in the interest of the United States to stay for years and years in a lawsuit, and in business, that he ordered to begin talks about a settlement.

* * *

MR. WILSON: This was a preliminary question as to whether you repeated this to me in my office.

THE WITNESS: I repeated this to you and was very aggrieved that, I had the impression that the American Government would not settle the case above the 50-50 percent basis.

BY MR. WILSON:

Q What advice did I give you on that occasion?

A You gave me the advice, nevertheless to proceed.

* * *

1517

BY MR. WILSON:

Q I show you two documents, Dr. Schaefer, marked respectively 68 and 69 for identification, and ask you if 68 is a letter which you despatched to the Attorney General on or about September 13, 1962?

A Yes, I did.

Q And is 69 a copy of his reply to you of October 16, 1962?

A It is.

Q And, to save time, were you talking to him about the threat of the sales bill in this correspondence?

A Yes.

Q Thank you. Now, at the Munich meeting, which is, as I recall, was attended by Mr. Orrick and a special associate of his, Mr. Hall, yourself, Mr. Seeger, Dr. Edmund Wehrli, and Mr. Drupbacher.

A Yes.

Q Were the principal items for intimate negotiation -- I use the word "intimate"; I mean detailed negotiation -- marked out or spelled out, to be left to the experts to work out?

A Yes, that's true.

1523

Q And can you recite to his Honor some of those details?

Q Eventually, what did you pay for those shares?

A I don't remember.

Q Do you remember it was something like \$6-1/2 million?

A I think so, yes.

Q All right. This tax claim that was marked up for an item to be discussed, do you remember how huge it was in its size?

A It was about, the whole about 20 millions, I think.

Q Seventeen, if we would be more precise?

A Seventeen, yes.

Q With regard to this phrase, "the intervenors," what was your knowledge at that time as to the number of human beings whom the Supreme Court had let intervene as Plaintiff Claimants in the case? How many were we dealing with?

A We thought that it was only about 2,000 shares.

Q 2,000 shares or 2,000 people?

A No, no. 2,000 shares, not 2,000 people. I don't remember the exact figure, but it was not much any more. Most of the intervenors, in between, had sold their shares.

Q But don't you remember that there were three sets of lawyers representing these intervenors?

1520 A Oh, yes. It was an awful situation.

Trial	Control	MCI	AD
1	85	75	65
2	82	72	62
3	78	68	58
4	76	66	56
5	75	65	55

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

1. The first step is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

Q And on 11, were a group present of Indian National Congress and a few who were affiliated in the group?

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).

Q And they had a little more evidence, just an
interference in the United States Government, did
they not, sir?

A Day's Work.

Q And they were represented by independent counsel?

A. Yes.

Q And wasn't it necessary to bring these people into our care in order to settle with the United States Government?

A Yes, and Mr. Orriek told us that -- that this is a condition that the intervenors would agree to.

MR. WILSON: Will you mark this the next number?

THE DEPUTY CLERK: Defendant's Exhibit 70 marked
for identification.

(Defendant's Exhibit 75 attached.)

1521

BY MR. WILSON:

Q Dr. Schrofer, I am sure that more than once you have seen Defendant's Exhibit 70 for identification, which is the Stipulation of Settlement in the case, have you not?

A Yes.

Q I call your attention to page 30, Schedule C, and see if you can find some 20 pages---

MR. O'DONOGHUE: I don't believe that's in evidence.

THE COURT: I'll sustain that.

MR. WILSON: I offer it in evidence.

THE COURT: Do you have any objection to it being received in evidence?

MR. O'DONOGHUE: May I see it? (Examining document) I have no objection.

THE COURT: Without objection, it will be received.

* * *

BY MR. WILSON:

Q In your negotiations with Mr. Orrick, where you were dealing in money with a rough 50-50 split and \$17-1/2 million worth of taxes, and \$5-1/2 million worth of costs of the General Aniline shares -- that is, Interhandel shares that you wanted sterilized, some 24,000,000 -- in the height of the primary negotiations, and I mean in the year 1962, how was this 24,000,000 to be dealt with in the settlement of the case.

BY MR. WILSON:

Q Now, Dr. Schoefer, would you come to the answer to my question, as to how Mr. Katzenbach insisted upon the treatment of this \$24 million?

1574 A He said that the tax claim was a hundred percent claim of the United States Government, and should come out of our pocket. That means out of our share. I said, during the whole years, it was understood in a different way, but he was absolutely sticking to his point. And I remember that in his office there was my colleague, Mr. Seager present -- there was really quite a scene; and I was tempted to break up the negotiations because I felt that we were a little bit badly treated.

Then, we had a new appointment for the following day, and I said, "All right. We agree," after having consulted with you, too, and because we felt that perhaps there could be reached a better price for the General Aniline shares than we thought in the beginning. But it was a very disagreeable and very surprising situation.

Q While you specifically referred to the tax claim, did he not demand the same treatment of the cost of the Chemie shares that you wanted to sterilize?

A Yes, but that was for us easier because it was more understandable.

4. "I am not satisfied with the way you do it. Suppose we
revised it to include the following formula, then I
would like to discuss it with you. The first sentence was
deleted and the new one is, 'The following is the
I know that Mr. Smith was an important man, but I think
the whole was still worth including for your work.'"

11. 0102.04105: Your Honor, I object on several grounds: One, it is beyond the scope of any Direct Examination.

Q. Of course: The other collection is, this is all right, and-- Well, I don't care. If you want to do it, your Honor, but it seems to me to have far beyond the appropriate cross-examination.

* * *

THE COURT: As I understand, is of the issues which have been put into this case related to the aesthetic one and the reasonable change in position by this witness from a hundred percent settlement to a 50-50 settlement, and I think all the circumstances surrounding the negotiations of settlements are relevant, and I will exclude the objective.

BY MR. WILSON:

Q Now, Dr. Schaefer, would you come to the answer to my question, as to how Mr. Katzenbach insisted upon the treatment of this \$24 million?

A He said that the tax claim was a hundred percent claim of the United States Government, and should come out of our pocket. That means out of our share. I said, during the whole years, it was understood in a different way, but he was absolutely sticking to his point. And I remember that in his office there was my colleague, Mr. Sanger present -- there was really quite a scene; and I was tempted to break up the negotiations because I felt that we were a little bit badly treated.

Then, we had a new appointment for the following day, and I said, "All right. He agrees," after having consulted with you, too, and because we felt that perhaps there could be reached a better price for the General Aniline shares than we thought in the beginning. But it was a very disagreeable and very surprising situation.

Q While you specifically referred to the tax claim, did he not demand the same treatment of the cost of the Chemie shares that you wanted to sterilize?

A Yes, but that was for us easier because it was more understandable.

Q And when was that, 1962, or 1961, or the end of
you, 1962 or 1961, or was it 1960?

A Yes.

Q Which in 1962, or 1961, or 1960, which is it?
If you don't know, it is what you, yes.

Q And you wrote Mr. Orrick Wilson on February 12
of 1962, or I received his reply of March 17, 1962 -- Exhibit
172 and 173 -- and you said of that to that you will
know him, or that you will know him, or your letter filed.
Q And this document was filed, Exhibit 172.

A Whether it has been signed.

Q Mr. Wilson: I have the wrong one. 173, is it?

Mr. Wilson:

Q --and you said of Mr. Wilson's reply of March 17,
1962 -- 173. Will you write down what you concluded that
denies the need for formalization of the termination,
that the termination, in fact, existed of the trusteeship?

A The termination existed, but Mr. Orrick made an
attentive on the fact that formally the United States would
also know that it all has been formally withdrawn. That's
why I wrote to him this letter.

Q But to make sure that you understood my question,
you intended on that exchange which you have before you, that
is to say, your letter, Exhibit 172, and Mr. Wilson's reply,
Exhibit 173--

A Yes.

Q --as a meeting of the minds on the fact of termination?

A In fact, we had already gotten back our freedom because both gentlemen said before, "All right, go on with your negotiations."

Q Did you consider that in any way you were acting surreptitiously?

A Not at all.

1986

Q --in proceeding independently of them?

A No, no, no. I told them, we would have the negotiations with the Justice Department ourselves because only we were completely familiar with the numerous sidelines, difficulties, interventions and problems which were linked to the main question.

MR. WILSON: Plaintiff's 179 witness.

Q Dr. Schaefer, in adherence to your desire to keep these gentlemen informed, did you write Number 56 to both of them?

A Yes, I did.

Q And are you aware as you sit on the stand today of any intentional act on your part to conceal from them your activity in any way, sir?

A Not at all. To the contrary, I thought that they were fully aware of what went on.

Q And did you have any idea, then, that the corporation should have been notified of the fact that the corporation was going to be shut down, or was it not?

A Yes, I had a good idea of it, namely the shutting of the corporation.

BY MR. WILSON: All right, next exhibit 73.

Q It relates to the letter of Mr. Plaintiff to the defendant, dated June 30, 1961, and the letter of the defendant to the plaintiff, dated June 26, 1961, and the letter of the plaintiff to the defendant, dated June 30, 1961--

A Yes, I do.

Q --I give you the opportunity to object to either the admission of the letter of the plaintiff or the letter of the defendant?

A I don't know.

THE COURT: Defendant's Exhibits 72 and 73 offered for identification.

* * *

BY MR. WILSON:

Q I show you Defendant's Exhibit 73 for identification, a cable of 13 September 1961, and ask you if you were aware of that despatch by Mr. Sawyer?

A (Reading) Yes.

Q And I show you Defendant's Exhibit 72 for identification, and ask you if that is the response that was received at your bank on 9/13/61 with respect to it?

A Yes.

MR. WILSON: We offer both of these in evidence if the Court please?

THE COURT: Any objection?

MR. O'DONOGHUE: I haven't seen one of them.

(Reading exhibits). I have no objection.

THE COURT: Without objection, they will be received.

1528

BY MR. WILSON:

Q I show you Defendant's Exhibit 36 and ask you if this is a letter which you despatched to Mr. Schultz on or about October 16, 1961.

A Yes.

MR. WILSON: This is already in evidence, if the Court please.

Q Without stating the sum, Mr. Spofford rendered his bill to the trustee, and the trustee transmitted it to you?

A Yes.

Q And was it paid?

A Yes, it was paid.

Q Thank you. Mr. Wilson made a full accounting to you of the expense money which had been deposited to his credit?

A Yes, sir.

Q Thank you. It has been suggested by Mr. Schultz that you attempted to subvert Mr. Spofford by attracting him

Q Now, is it your recollection that Mr. Wilson, and for the
 purpose of the trial, I am going to ask you to
 sit, did you have any conversation with him?

A Yes, sir.

Q Now, what was the subject of that conversation? Did you
 talk about the trial?

Q Now, what was the subject of that conversation?

A I think the subject was the fact that the
 Government had a copy of the letter which was
 dated about May 3, 1961.

Q Yes.

Q I think you mentioned something about the third
 full paragraph, which is short. Would you read it aloud
 so the Court will understand.

THE COURT: Is it in evidence?

* * *

THE COURT: The Clerk says it is not in evidence.
 Since there is no objection, it will be received.

* * *

BY MR. WILSON:

Q The third full paragraph, about five lines -- would
 you read it, sir?

A "According to the power granted to Mr. Charles
 Wilson, it is solely under his authority that we can
 with the United States Government and place. Perhaps:

1530

we will later have to discuss whether it would not be "advisable from a certain moment on to establish direct contacts between yourself and the Company on a basis then to be fixed."

I wrote that because practically everything was handled and done by Mr. Spofford, and I felt that it would be more simple to write and contact with him directly.

Q Are you aware of any resentment on Mr. Spofford's part to your writing him on that vein?

A Pardon me.

Q Are you aware of any resentment on Mr. Spofford's part?

A Not at all. We were on the best of terms.

MR. WILSON: If your Honor please, I offer in evidence Defendant's Number 62, which is a letter to Dr. Schaefer from Mr. Spofford dated September 13, 1961. Do you want to act on these separately?

* * *

MR. O'DONNELL: No objection.

1531

THE COURT: Without objection, it will be received.

* * *

MR. WILSON: I offer in evidence No. 64, a letter from Dr. Schaefer to Mr. Schmitz dated 9/13/60.

THE COURT: Without objection, that will be received.

MR. WILSON: I have a few more things to
 say. I am going to ask the Court to please

MR. WILSON: I am going to ask the Court,
 please, to please accept the following:

MR. WILSON: I am going to ask the Court, I wish to
 say that I am going to ask the Court to please

MR. WILSON: I am going to ask the Court.

MR. WILSON: I am going to ask the Court to please
 MR. WILSON: I am going to ask the Court to please.

MR. WILSON: I am going to ask the Court to please
 the Court to please, your Honor.

MR. WILSON: I am going to ask the Court.

MR. WILSON: I am going to ask the Court to please
 from Mr. Schaefer dated 9/16/61.

MR. WILSON: I am going to ask the Court.

MR. WILSON: I am going to ask the Court, it will be received.

* * *

1532 MR. WILSON: I am going to ask the Court to please
 to the Attorney General from Mr. Schaefer dated 9/16/61.

MR. WILSON: I am going to ask the Court.

MR. WILSON: I am going to ask the Court, it will be received.

* * *

MR. WILSON: I am going to ask the Court to please
 to the Attorney General dated October 16, 1962.

MR. WILSON: I am going to ask the Court.

THE COURT: Without objection, it will be received.

* * *

MR. WILSON: That completes our examination of the witness.

THE COURT: Very well.

Mr. O'Donoghue, have you any impression as to how long you will be on Redirect?

MR. O'DONOGHUE: Yes, I think about 20 minutes is my estimate.

THE COURT: All right. You may proceed.

REDIRECT EXAMINATION

BY MR. O'DONOGHUE:

Q Dr. Schrofer, you spoke about meeting with Mr. Wilson in Jan., and about his talking about his relationship to the Administration. Was he trying to sell himself to you, or wasn't the situation the other way around?

A He was not trying to sell himself; but he said that he considered the treatment of Interhandel as unfair, and that he was familiar with the situation of the General Aniline and Film Company, and that he felt that it should go back, and that he had quite a lot of friends to whom he could explain the case, hoping that we could get it back. Nobody tried to sell to the other.

Q You were asking him to do you a very great favor, weren't you?

Q And you say there was a discussion of the coming Presidential election at that time?

A It was only the following fall after he had accepted the trusteeship that elections came.

Q Yes, I realize that. I was here. But did you say that there was a discussion at Paris of the coming elections?

A Well, we just, in conversation talked about the election, and he was quite confident that the Republicans would stay in power.

Q Did you know who the candidates were?

A Oh, yes, it was Mr. Nixon.

Q And who was the Democratic candidate?

A The Democratic candidate was Mr. John Kennedy.

Q Didn't you know that neither one of those men had even been nominated by their parties at that time?

A I know it afterwards. I don't know--- You asked---
 1535 That was not at the Paris meeting. It was just a general talk about the prospectus of the election.

Q There was no further discussion of that at any other time?

A No.

MR. DONOHUE: May I have Plaintiff's 74, please?

Q Dr. Schnitzer, you have testified on Plaintiff's 74, on Cross-Examination by Mr. Wilson. Do you remember that?

A Yes.

Q. Will you say what you think about the fact
that he did?

A. Well, it is a fact that he did it. The
question is, what is the significance of it?

Q. What is the significance of it?

A. It is.

Q. In your opinion, did your brother of Houston
think he was going to die?

MR. GIBSON: Well, he knew he was going to die, he knew over this
on what day--

MR. GIBSON: I certainly did.

MR. WILSON: -- and he identified out the fact
that the letter of the 2nd was the answer to the longer letter.

MR. WILSON: The long letter.

MR. GIBSON: Well, I think he was over this. So
1556 this, and he just now said, "I think he was over
in answer to this."

MR. GIBSON: He was told on record that he did
not know what the other letter.

MR. WILSON: Absolutely.

MR. GIBSON: I'll explain the situation. I don't
want to explain these things over and over again.

MR. GIBSON: I don't want to review it again,
but he stated on Cross-Examination that he didn't understand
this paragraph.

BY MR. O'DONOGHUE:

Q And did you ever have that paragraph clarified for you?

A No, because I didn't feel the need to clarify -- it was just the general expectancy, and we always had the intention, and I told that to Mr. Schnitz, if he would recover fully General Aniline, naturally, there would be compensation for him and for his parents. I thought the thing was settled.

Q Is it your testimony that you did understand this paragraph?

A It was a very unclear paragraph, but what was talked between us was very clear.

Q Was this in contradiction to what had been talked between you?

1537 A It was not at all a contradiction. Mr. Schnitz knew perfectly well what he could expect.

Q Dr. Schaefer, when Mr. Wilson took over this trusteeship, there was legislation pending in Congress then to sell GAT, was there not?

A I don't remember. I think so.

Q One of his functions was, or one of the things he performed was to speak to several Senators and try to prevent that bill from being passed, isn't that true?

A. I don't know. I don't know if he'll go to the ...
 ... of ... and

Q. How many

A. Oh,

Q. Didn't he

A. Yes, he

Q.

A. Yes, but they

Q. But it

A. No.

Q. So that, when it was

A. It could be. I was not informed about the proceedings

1538 in the American Congress.

Q. You said that you thought after the elections,

A. Yes, we thought so.

Q. Is there

A That was especially because nothing happened, no proposition came forward, and Mr. Wilson had told us that his best friends were in the former Government.

Q Did he say they were better than those in this Administration?

A No, not at all.

Q You said another thing that prompted you to take less than the full amount that was being sought was the attitude of the stockholders, is that correct?

A Yes.

Q Dr. Schaefer, do you remember having a meeting of the stockholders in the mid-summer of 1961?

A Yes, we had every year a meeting of the stockholders.

Q Do you remember that there was any trouble at that meeting?

A There were always troubles at every meeting.

1539 Q Do you remember writing to Mr. Spafford on July 4, 1961---

* * *

BY MR. O'DONOHUE:

Q Do you remember telling him this: "I was very glad that we had no special troubles at the General Meeting, and there was much less people talking that in previous years"?

A: Yes, and if I understand you, there were quite a few, I think some of them, I think of questions raised about the fact that the Board, the State Board, the Federal Board, were not the best placed to handle the situation.

Q: Now, if we go back to the whole of all, was it not?

A: Yes, I think it was, that, really, the situation was not what it should have been.

2741

Q: And you were there at the time of the meeting, did you not?

A: Yes, I was.

Q: And you stated that as individuals and organizations, we had to go on, didn't we?

A: Yes. That was the situation at the time.

Q: You spoke of the meeting in March of '61. Didn't you plan that you came over to this country to simply test the situation?

MR. WHELAN: If your Honor please, this has been gone into.

MR. COCHRAN: Yes. I will sustain the objection. I don't think you should go into the same subject covered before.

MR. COCHRAN: This was brought out in Cross.

THE COURT: It was brought out in Cross because you covered it in your Direct.

MR. O'DONOGHUE: My impression was that he said something differently on Cross than he did on Direct.

THE COURT: You may proceed with your questioning.

BY MR. O'DONOGHUE:

Q You did not intend to undertake any negotiations when you came over here in May, did you?

A Not at all. I thought that after having waited a year, and the shareholders and public opinion beginning to get impatient, I was ordered by the Board to get a first-hand impression. I went, together with Mr. Spofford, who was absolutely in agreement to see many me, or to be accompanied by me, rather.

Q So that the negotiations were left in the hands of Mr. Spofford and Mr. Wilson?

A During this time there was no negotiations. There was a testing of the atmosphere and of the ground here in Washington.

Q Did you tell us that the reason that you wanted a formal withdrawal by Mr. Wilson was because Mr. Orrick asked you for such?

A The last formal withdrawal was necessary because the Justice Department knew that, practically, the two gentlemen had withdrawn, but there was always the knowledge

that this is a very serious matter, and that the British will have to be very careful of it, and that

Q. Now, did you write this letter?

A. Yes, I did. I wrote it. I don't remember the date of the letter, but I know it was written some time before the trial, and I know it was written in the prison.

Q. Now, did you write this letter, "I don't remember the date of the letter, but I know it was written some time before the trial, and I know it was written in the prison."

A. Yes, I did. I wrote it. I don't remember the date of the letter, but I know it was written some time before the trial, and I know it was written in the prison. I received it from the prison, and I know it was written in the prison. I don't remember the date of the letter, but I know it was written some time before the trial, and I know it was written in the prison.

Q. I don't see anything in this letter, but I don't see anything in this letter. I don't see anything in this letter, but I don't see anything in this letter. I don't see anything in this letter, but I don't see anything in this letter.

A. "I don't see anything in this letter, but I don't see anything in this letter. I don't see anything in this letter, but I don't see anything in this letter. I don't see anything in this letter, but I don't see anything in this letter. I don't see anything in this letter, but I don't see anything in this letter."

Q. You stated on your Cross-Examination that it was necessary for you to step in in the early part of 1962 because only you were familiar with all the details and side-lines, et cetera, et cetera, were you not?

A. Yes.

Q Wasn't that always the case, even from the inception of the trusteeship?

A Yes, but these were the details of the discussion and of the Agreement.

Q Right. So that from the inception of the trusteeship, it was always understood that the trustee would act on broad lines toward working out a settlement, and that you would come in and help with the details.

A That was never said formally, but it was clearly understood because we were familiar with all the -- especially the Swiss side, the intervention, and all sorts of complications.

Q So that that was your understanding all along, that that would be a part of the general settlement picture when and if the trustee succeeded?

A Nobody talked about it because nobody had the opportunity to practice that because there was no proposal forthcoming. But that was clearly understood: Details we had to work out and help, and especially Mr. John Wilson because there were a lot of juridical questions with which he was familiar, for settlement.

Q That's what I'm trying to find out. You paid Mr. Spofford's bill, but rather -- You didn't think it was a very reasonable bill, did you, is that it?

A No. We thought it was fair, but a quite high bill.

1. The first step is to find the value of x in the first row.

2. The second step is to find the value of y in the second row.

3. The third step is to find the value of z in the third row, and so on.

...

10. The final step is to find the value of x in the last row.

...

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBERT A. SCHWITZ,

Plaintiff,

vs.

SOCIETE INTERNATIONALE,

Defendant.

CIVIL ACTION 85-67

Washington, D. C.

Wednesday, February 4, 1970

VOLUME XIII

(Pages 1547 - 1745)

Plaintiff's Copy

MARIE S. TAYLOR
Official Reporter
Room 6812 - U.S. Court House
Washington, D. C.

1553

(Examination, direct examination of Mr. Spofford was read as follows:

1554

(Examination of Mr. Spofford was taken January 23, 1960, at the offices of the United States District Court, Southern District of New York.)

"CHARLES I. SPOFFORD, called
as a witness by plaintiff:

"DIRECT EXAMINATION:

"Q Would you state your name, please?

"A Charles I. Spofford.

"Q And you are a lawyer with the Davis Polk firm?

"A I am. I am a partner of the firm of Davis,
Polk & Wardwell.

"Q May we say you are a senior partner of one of
the outstanding firms in the country?

"A You may say I am a senior partner of Davis,
Polk & Wardwell.

"MR. STRICKLER: We will stipulate the latter.

"Q And you were a senior partner in 1960, were you
not?

"A A little less than a year, but I was, yes.

"Q This has to do with the claim of Interhandel
against the United States with regard to the seizure
of the General Aniline and Film Corporation by the
United States at the outbreak of the war.

"When did you first become familiar with the situation other than your general knowledge through the newspapers?

1555 "A I first became familiar with the Interhandel situation in the context which brings us all here, in the spring of 1960.

"Q What were the circumstances under which you became acquainted with it then?

"A I was a rather close friend and business associate of Mr. Charles E. Wilson. We were fellow directors of the Guaranty Trust Company, and I used to see him regularly, therefor.

"He told me after one meeting in the spring of 1960 that he might have to get into the Interhandel situation, as he put it.

"I raised my eyebrows because I knew as a lawyer this had been kicking around for a long time and I wondered how it landed on Charlie Wilson's doorstep, and he said he was being asked by the Swiss interests that then controlled Interhandel to get in and see if he couldn't arrange a settlement of the claim with the United States Government, to work out a settlement of the matter so it could be disposed of.

"That he hadn't decided whether he should do it or not, but he was disposed to do it because he felt he didn't know the Swiss owners and he wasn't as

much noted by their friends as he was by the fact that he thought this was a confidential matter, and the
 1555 "United States Government, for its own good name, wanted to dispose of the matter in a quiet way."

"Q Did he expect to be involved at that time in what capacity he would be expected to act?"

"A No, he didn't. When he first talked to me, he said he was going to be asked to get into the matter and try to work out a settlement."

"Q Did he give you any of the background of the situation or the present status as it then was?"

"A Little or none, at that time."

"Q What answer did you give to him about your possible representation of him?"

"A I said anything that he wanted me to advise him on, I would, sight unseen. I said, 'About the Interhandel situation, I would like to know more about it,' what his capacity would be, what my capacity would be, see if there was any conflict of interest that might arise here at the office; but I was disposed to help him if I could."

"He said, 'We will talk about it again if it comes up. I don't know whether I am going to do it or not.'"

"Q Did it come up again, and if so, under what

circumstances?

1557 "A It came up again later in the spring. I think he told me after another Board meeting that it "looked very much like he was going to take on the Interhandel settlement, and he then, a few days subsequent to that, he called me up to his office and I went up there, and he told me a little bit more of the story, and said that he didn't think he could turn it down.

"He felt he was under an obligation to do this for the good name of the United States Government, as he put it.

"MR. STRICKLER: Mr. O'Donoghue, may I interrupt?

"If you don't know, at trial, Judge McGarragh has been permitting conversations between persons to come into evidence, and we have had a continuing objection at trial as to this type of hearsay which has been admitted by the Court.

"Can we stipulate between us, Mr. O'Donoghue, that the same objection would be made throughout if you are going to get into this type of conversation?

"THE WITNESS: I was talking about my conversation with Wilson.

"MR. O'DONOGHUE: And you object to that?

"MR. STRICKLAND: Yes. This is the same thing we have had in the case, and we have had a continuing objection to it, and I believe I have continuing objection.

1953

"MR. STRICKLAND: Yes, I will.

"MR. STRICKLAND:

"Q How far back did you go back?

"MR. STRICKLAND: Would you read it back?

"(The question was read back.)

"Q Approximately when was that conversation?

"A I could place it definitely by reference to my diary for that year, if it was important.

I would guess it was in April of 1960.

"Q Did the occasion arise when you went to Paris and if so, what were the circumstances leading up to that?

"A Shortly after the conversation that I last testified to, Mr. Wilson said that this was going to be sort of formalized or come to a head at a meeting in Paris, and he would like to have me go with him.

"It was rather short notice. I am not sure, I think about one day's notice, and I said I would, and I did.

"I went to Paris on the date which is in the record somewhere, I don't recall. .

"Q Would it be April 30th?

"MR. O'DONOGHUE: Would you stipulate to that, Mr. Strickler?

1559 "MR. STRICKLER: Yes. That was the day that "was established.

"A I will accept that, April 30th.

"Q Who did you meet with in Paris?

"A We met--there was one conference in Paris. It was in the morning. I think Saturday morning at the Hotel Parc Monceau, or Royal Monceau, and present in addition to Mr. Wilson and myself was Dr. Schaefer, the chairman of Union Bank, Dr. Ulrich Wehrli, one of the officials of Union Bank, Robert Schmitz, who I believe is involved in this proceeding.

"Q The plaintiff in this case.

"A And I think that is all.

"Q Would you tell us as closely as you remember what was discussed at that meeting in as much detail as you can remember?

"A As I recall the meeting, there was not very much discussion. It was prearranged and, as I recall it, Dr. Schaefer produced some papers and showed them to Mr. Wilson, and Mr. Wilson showed them to me for examination and to look at them.

"The papers were resolutions of the Board of Directors of Interhandel authorizing the officers to

entered into an arrangement with Mr. Wilson, and then there was a power-of-attorney, and went to that resolution, running from the date to Mr. Wilson.

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"While the power-of-attorney was up, I am quite clear on this, because I was not at all looking for something to put a burden on this thing, and I had hoped we could give a statement of the case by someone, but there was no substantive discussion, merely the enunciation of these powers.

"And after I had looked them over and made some points and talked with Mr. Wilson, he told Dr. Schaefer he would like to take them back to New York and examine them more fully, and think about them, and he would let him know within a few days or weeks.

"Q Were these resolutions already enacted by the Interhandel board?

"A I believe they were. I believe it showed they bore a date previous to the date of this meeting, maybe one or two days previous.

"Q Was there any indication as to the authorship of the resolutions and the power?

"A No indication on the face of them, no.

"Q Was there any discussion at the meeting which indicated that?

"A No, I don't think so.

"Q What language were they in?

"A They were in English.

1561 "Q Did you at that time or subsequently learn who drafted them?

"A The same day, and after the meeting had adjourned, Bob Schmitz admitted parenthood. He said he had drawn them and he took pride in it, although I think either of you will recollect, if you have ever seen them, they were not very artistically drafted, from a lawyer's point of view.

"However, they were adequate for the purpose, or at least I thought so, and did not undertake to redraft them or suggest any major changes myself.

"Q Was there any indication of the capacity of Mr. Schmitz at that meeting?

"A No. Everybody seemed to know it but me. I didn't understand it, and I sat with Mr. Schmitz after the meeting to try to find out who he was. That was the first time I saw him, and it was obvious he was rather deep in the counsels of Interhandel if he drafted these resolutions.

"So I asked him, I tried to draw him out with some questions, which was not difficult, and he told me a little something of his background in the matter, his father and all of the stories which you are

familiar with.

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"After that, that was my first understanding of Schmitz's relationship with Kennedy.

"Q Did you discuss with Mr. Wilson at that time whether or not he should sign the order or what were the circumstances under which he should sign immediately?

"A Well, this was a broad record order. It was a very broad record order, and I told Charlie this was so broad that it might raise some problems, and I said I thought we ought to think it over and look it over a little more carefully at a little more at our leisure than sitting around the table with Schaefer and Schmitz, and he acted on that suggestion, and he had not until he had gotten back and gone over it, and he accepted it and he signed it.

"Q Was there any suggestion at this meeting that it be kept confidential for the time being, the discussions at the meeting?

"A I believe there was. I believe Dr. Schaefer stressed the fact that this was highly confidential and he would not want it to be known to anyone in New York or Washington that Mr. Wilson had been given this broad power and he emphasized that.

"Q Was there any mention of a Mr. John Wilson at that meeting?

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"A Yes. He explained that Mr. John Wilson had represented Interhandel over the long years of this litigation, and he, Mr. Schaefer, would want a chance to communicate with Mr. John Wilson and explain this power-of-attorney or so-called trusteeship to Mr. Wilson before he learned about it from somebody else, which seemed to me quite normal and acceptable.

"So, I for one, agreed that I would say nothing to anybody about it, and did not.

"Q When you came back to this country, did you make any efforts to familiarize yourself with the situation, and if so, what efforts did you make?

"A The first thing I did, I tried to familiarize myself with the situation because anything being connected with the Interhandel situation would, and I suppose the first thing I did, whether it was my motion or his, was to talk at some length with Bob Schmitz.

"He wanted to make sure I was briefed and he was overflowing with background and information, and he came down and talked to me at length about it, and we had a meeting up with Charlie Wilson too.

"I rightly or wrongly came to the conclusion that the well was by no means dry, but I thought I had gotten the benefit that I could from it, and I am

1961 "not sure whether I am qualified-- I think I called Schaefer or Heilali and asked if I was free to communicate with John Wilson, because he is an attorney during all this business, and I thought that would be the basic information which I had to have before I could help Charlie Wilson at all."

"It was cleared with someone in Zurich because he did have a meeting with John Wilson."

"John came up to New York on one or two occasions, and I went down to Washington on several occasions just for the purpose of discussing the matter with John Wilson."

"Q Those meetings were before or after the acceptance of the trusteeship with Mr. Wilson?"

"A I know most of them were after. One or two might have been before. I think one or two were before because I wanted to know what was this all about, before I advised Charlie Wilson finally whether he should get involved or not."

"Q Did you ultimately advise him on that?"

"A I did."

"Q Was there any discussion at the Paris meeting or subsequent thereto about your representation of the trustee, if we could so designate him?"

"A I didn't hear any discussion. I think

1565 "Charlie Wilson told Dr. Schaefer that if he took this power-of-attorney, he would want to have counsel, and that he was going to ask me to serve as his counsel, and I guess he cleared that with Dr. Schaefer, and he did ask me to serve. But I don't recall any discussion of it at the meeting.

"Q After you agreed to represent as counsel Mr. Wilson, was there a discussion between you as to the division of your duties in this task?

"A I don't recall any. The division of duties were pretty natural and inevitable. Charlie Wilson was a very senior businessman and government official, and I was a practicing lawyer, and the detail work would obviously fall to me and my staff, matters of policy; important contacts and conferences when appropriate would obviously fall to him.

I don't know that we ever sat down and plotted that out. He said, 'You go ahead and get things started.' He called me 'Charlie,' which was confusing-- but 'you go ahead and get things started.'

"Q What did you do in that connection initially?

"A Initially I continued my efforts to find out what it was all about, which was not as easy as it might appear, because, as you both know, as everyone now knows,

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"This matter had been pending for fifteen years and worked its way up through the Federal Courts in the United States, several state supreme courts, proceedings in the Federal District Court at New York, and obviously, there was some feeling that I had to have before I started talking with people in the government about getting out of this place. And that, John Wilson contributed to that in our conferences.

"Q Did Robert Schmitz continue to do so?

"A Yes, Robert Schmitz did. He continued to do so. He would come down here and give me some angles he thought I ought to have in mind, and he had a habit of writing out longhand, long dissertations on the subject, which my secretary would be asked to copy up and which were his recollections of fact.

"I said, 'Bob, I am not interested in argument now. I am going to make that when the time comes. I am interested in facts, dates, places, people,' and he would start out manfully trying to write a piece of paper answering that description, but before he got very far, he would launch into argumentation.

"So, I spent a good deal of time with Schmitz getting his views and facts that he had in his possession, and I may say, they were very extensive because he had been living this case all of his life.

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"His father had been president of General Aniline and Film, and he had a sense of mission about it which he communicated with everybody he talked to.

"Q When did you first make any contacts with government officials and what officials?

"A Sometime during the--- I am not sure whether it was before or after the summer of 1960 when I called on the Alien Property Custodian who was then Colonel Dallas Townsend.

"Q Did you present Mr. Wilson's credentials and your own?

"A I gave Townsend the copy of the power-of-attorney. I thought he should have that to know who was in charge of this matter.

"Q Did you open any discussions with him?

"A I called on him and I told him about Charlie Wilson and I explained my presence, and we discussed the matter, not at any great length in any of these, because I wasn't prepared for it, and because he was much more interested in the legislative situation at the time.

"There was some legislation pending which looked like it might be adopted which would have forced the sale of the shares of General Aniline and Film

1568 "Before the conclusion of the International proceedings, and I never could make out whether he was sponsoring or abetting that, or whether he was against it. He was a little ambivalent about it.

"Q What was your understanding as to the purpose of the trust, was it to work out some sort of settlement with the Swiss Government or was it to recover all of the Ingham's interest in 1947?

"A In the eyes of the Swiss principal, those two would be, I think -- There would be no difference between the two aspects of that question.

"As Charlie Wilson put it, or put it to me, his mission was to settle the matter so the litigation could be terminated and the shares returned to the rightful owners.

"Q Did Mr. Schaefer say anything to you at the Paris meeting or subsequent thereto, to the same effect?

"A I believe he probably did, although at the Paris meeting, we didn't get into terms of settlement or anything of that sort.

"Q Did Dr. Wehrli come over to this country and meet with you during the course of the summer or early fall of 1960, if you remember?

"A He was here several times during 1960 and

1569 "and 1961, and I can't place the dates. I don't have the dates in mind right now, but Dr. Wehrli did come over and relatively soon after Wilson and I got into the matter.

"MR. STRICKLER: There are two Dr. Wehrli's?

"THE WITNESS: Yes. I am talking about Dr. Ulrich Wehrli. The other one is Edmond Wehrli. I had no contact with him.

"Q What was his purpose in coming, as he told you, do you remember?

"A I don't recall. My impression was that Dr. Wehrli was sort of the assistant to Dr. Schaefer, who had this matter, among others, and he wanted to come over here and to give us guidance, if guidance was to be given.

"He talked mostly with Wilson. I used to see him and took him to lunch and extended him courtesy, but Wehrli and I never had any substantive discussions.

"Q Colonel Townsend finally left office, I suppose, in January of 1961. Did you have any settlement discussions with him while he was in office?

"A No.

"Q Do you know whether Charles Wilson did?

"A I know that Charles Wilson had one talk at

1570 "which I was not present with Colonel Townsend, which I suppose can be also called a significant discussion. But I am not aware of the details of that which I think he already testified to.

"Q Did Dr. Wehrli tell you anything to you in December of 1960 about the possibility of his going over to Zurich to see Dr. Schaefer?

"A I think he did. I am not clear on it, but I think he did, because he had something he thought Schaefer should know, and he wanted to have a talk with Schaefer.

"Q Do you know what that was?

"A It may have had to do with his talks with Townsend or the Attorney General or both.

"Q But you don't know the details of it?

"A I do not. I was not present at those talks, and I don't recall the exact pretext. In fact, I think he did not go. I think that is one time Wehrli was sent over here.

"Q Did you see Dr. Wehrli at that time?

"A Yes. I saw him whenever he came to the country, but as I have said, Wehrli and I never communicated on any matters, substantive matters. He talked with Wilson. Sometimes I was present, sometimes I was not.

1571 "Sometimes Wilson told me about it. Most times he did, but that is the way it worked. Wehrli was sort of a confidential emissary of Schaefer.

"Q Did you see any other government officials other than those of the Department of Justice during any of the time that you represented the trustee?

"A Any government officials other than---

"Q Other than officials of the Department of Justice?

"A In this matter, no, except that I saw some members of the legislative branch on several occasions for two rather divergent purposes.

"One was the legislation, I think Senator Keating of New York introduced a bill, and it was making some headway which would have permitted or required the Department of Justice to liquidate the GAP-held shares and get it out of government control without the Interhandel case having been disposed of.

"Well, this was something that would have really complicated the length of the proceedings a good deal, and we all felt, and I think John Wilson agreed that this legislation should be blocked if it could be, and I undertook to go down and see Senator Keating and Senator Irven of North Carolina, half a dozen Senators, maybe, who had some interest on the

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"bill, were in the committee, we could sponsor the bill, to just tell them of what I have known, which wasn't as much as I like to tell, but lack of the committee time and the fact that a contribution this would be to them, I don't do so directly.

"As I said, I am not a member of the legislative branch, and in the period we are talking.

"Then, on another occasion Mr. Schaefer came over and wanted to see Attorney-General Kennedy. He wanted to deal with him personally on this matter, and he requested Mr. Wilson or he requested me directly, I guess at that point, to arrange a conference for him with the Attorney-General.

"Well, I attempted to do so, but I knew even before I started that it was out of the question, because this is just about the time of the Bay of Pigs fiasco. The Attorney-General had been placed in charge of a committee to investigate it with General Taylor and three or four others, and I knew he was not coming to the Department of Justice at all during the day, and he did all his work as Attorney-General in the evenings with his assistants. And it seemed to me it was about as unpropitious a time to see him on anything as one could have chosen.

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"I told Dr. Schaefer that much to my regret, I could not arrange an appointment with him. He said, 'Could I see somebody else'? I said, 'I think you can see Mr. Orrick,' and I said it might interest you to see some people in the legislative branch, because the Senate is getting into the act.

He did see Orrick, although I don't believe I went with him. I am not clear on that.

"He saw Orrick, and I am getting back to the answer of the question. You asked me who I saw, and on this occasion I took Schaefer to see several members of the Senate the day he was here, and that is the other occasions on which I saw members of the Legislative Branch.

"Q Did you ever see Mr. Dillon and Mr. Herter?

"A Mr. Dillon was Assistant Secretary of the Treasury. I did see Mr. Dillon, but not at that time. I saw him later in the game.

"Q When he had moved over to State?

"A I saw him when he was still in the Treasury.

"Q Did you find---

"A I did not see Mr. Herter.

"Q Did you find that there was any history in this case available to inform you as well as to inform government officials in any convenient form?

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"A Well, John Wilson loaned his files to me and there were a dozen files, I think, filled with court papers and they were all in the proceedings had gone back and forth over the years in the Federal Courts, but we had found a situation where the need of, was for a statement of the way some of these various proceedings had each come, and what when they had been brought and how far they had gotten, -- in other words, some consecutive statement of development of this interlocking series of court proceedings which had gone on over the preceding 15 years. Sort of a primer on Interhandel.

"John Wilson lived the case and he knew it chapter and verse, but the process which we tried, for John to just talk and me to take it down, didn't altogether meet the need that I felt for something that would place all these different proceedings in context. I felt that more strongly the further I got into it.

"Q Did you do anything about that situation?

"A I did. I decided to try and prepare a memorandum which would, so far as I could remember, recite the facts in as simple a fashion as this complicated situation could be set forth, and I did.

"I spent quite a considerable amount of time

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"on the preparation of such memorandum. I got great assistance from John Wilson on it. I told him I was doing it and he interposed no objection, and he contributed more background when I talked with him, and in the final stages, I showed him the final draft, and he made some helpful comments.

"This memorandum, as I got into it, if you want the rationale for it, I will just say this: I did it principally for my own reference and guidance so that I would know about these proceedings before I got into any kind of negotiation with anybody in the Department of Justice, or anybody else that would be involved in them. I felt it wouldn't be an equal struggle as ignorant as I was, and I couldn't hope to get the same degree of familiarity that John Wilson had, and I didn't think that was really required, because so much of it was procedural, and somewhat repetitive, that I thought if I could get that in context, we might sort out the essential proceedings.

"Another factor which grew on me as I worked on this thing, was the fact that it put the United States Government, I thought, in a very bad light to any fair-minded lawyer or person who read the record of previous buyers, and I thought it would be useful

1576 "to have such a document for the use of the people
in the Department.

"I knew that many of the people at the policy
level were against the idea, and I thought
so, but I felt that I should be
prepared.

"I thought it might be made public at
some point in this matter too. That kind of a turn,
because this wasn't on instructions from Zurich, it was
my own feeling that this kind of a case ought to be
prepared and prepared for statement under conditions
that might arise.

"Well, that is the story of that memorandum
which I think is in evidence.

"Q It is in evidence. When was that completed?

"A I would think in March or April of '61.

"Q Prior to its completion, did you have occasion
to go to Zurich in connection with it?

"A I went over there. I didn't get much en-
couragement from Schaefer on this, I must say. He knew
I had been working on something, but I told him that I
thought the facts spoke louder than anything else in this
situation, and I wanted to present the facts in the way
in which it would speak loud to anybody that read them.

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"And he said, 'That is all right, go ahead, do it, but I would like to see it first.' So, I went over to show it to Schaefer and Schaefer gave it to Wehrli and Wehrli thought it was accurate, and I also wanted certain points cleared for accuracy; and Schaefer and Wehrli gave it their blessing, and that was when it was in the semi-final stages.

"Q Was Robert Schmitz in Zurich at that time?

"A Yes, he showed up while I

"Q Did he participate in any preparation?

"A He sat with me and I showed it to him and of course, he had a great many ideas of matters that ought to be included that weren't. And I don't think he found anything incorrect in it.

"I saw with Schmitz the whole day, I believe, in Zurich, going over the thing and satisfying him that this was an accurate treatment summary of the background of this proceeding.

"MR. STRICKLER: May I, for clarity, ask one question?

"When you say, 'He had many ideas that ought to be in it that weren't included,' did this mean that they were included at that time?

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"THE WITNESS: No. All I am talking about specifically, he saw all this through the eyes of his father, and he was not at all involved; that dealt with his father's and his own interest in his father's interest in the matter. As a witness for his father, it was his father's interest of that sort, and I think that is the interest of the purpose I had in mind.

"THE WITNESS:

"Q. Was Dr. Schaefer---

"THE WITNESS: But I will say that he had a wealth of background and he made it available, and I think there may be some things in that memorandum that he contributed during the Zurich session.

"Q. Prior to your going to Zurich, was there any suggestion by correspondence or telephone that Dr. Schaefer come over here and see any officials; or did that come up when you were in Zurich?

"A. I can't really-- I am not clear on that, Mr. O'Donoghue. I believe it probably was in Zurich when Dr. Schaefer expressed some impatience with the fact we hadn't gotten the thing settled, and we had been at it a few months, which didn't seem much against the 15 or 20 years he had charge of the matter.

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"So, he said I think on one occasion, I can't recall just where, 'The only way this will be settled, if I get together with the Attorney-General, I will settle it with Bobby Kennedy.'

"Well, I personally did not believe that was the way to settle the case, and I told him so. We disagreed on that, and he later came to this country and he later did see Bobby Kennedy.

"Q Did he come to this country twice, do you remember?

"A I don't remember. I think he probably did, yes.

"Q It was once in May of 1961 and the other in October of '61?

"A Yes, I do remember May. I do remember his trip in October. I remember both of them.

"Q You suggested earlier that he went to see Mr. Orrick on his May visit. Did you go with him at that time?

"A I can't recall it, but I must have gone, because I think Mr. Orrick said that I did and I don't see how I would have been absent, although I tell you, John Wilson, I think, was present and I think I may have been unavailable that day; and I was keeping

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"Rocha wanted on a sort of play-act account of what I am trying to do, but I know about Orrick, that I had been to see him and that if he came along, we must discuss it. I am sure you probably did not want to discuss it."

"Q I take it you have no recollection of a meeting with Orrick and Mr. Seaboard?"

"A No, I do not. I am pretty clear I did not participate in the meeting with Orrick and Seaboard."

"Q We have mentioned Mr. Orrick. Who was he and when did he come into the picture?"

"A He is a lawyer and came from civil life, I believe, into the Department of Justice at the turn of the Administration, early '61, and was appointed Assistant Attorney-General in charge of the Civil Division."

"Q Did he have cognizance of this Interhandel-GA matter?"

"A Yes, he did."

"I remember I would talk to Mr. Gehmann, who was assistant to the Attorney General, about this and trying to arrange to see the Attorney General, or trying to see to whom I could talk in the Department on this matter. And he said, 'We are going to wash out

1581 "the old Alien Property Division and going to put that under the Civil Division under Orrick, and I suggest you go see Orrick."

"Q Approximately when was that, do you recall?

"A The late spring of '61. Maybe not the late spring, maybe the middle. March or April -- somewhere in there.

"Q Did you find him informed on this matter?

"A Informed of the matter and of the general nature and complexity of it, but not in any detail.

"In fact, he said, 'Listen, I am not getting into any detail, but I know it is one of the biggest headaches we have, and we are going to put it in Bill Orrick's department.'

"Q Did you furnish Mr. Orrick with a copy of the Trustee's Memorandum, as it is called?

"A I did, yes.

"Q Approximately when did you do that?

"A Late April or early May.

"Q Did you then have further discussions with Mr. Orrick during the course of the late spring and summer of 1961?

"A I called on him several times, yes.

"Q Was there any settlement discussions with him?

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"A He discussed it on a basis of settlement. He did not discuss the term of settlement."

"Q That was the basis of settlement in the case of 1933, is it not?"

MR. STRICKLER: That is correct, your Honor. The objection to this point is that it has been in the public domain, as a matter of fact."

THE COURT: I will overrule the objection.

MR. OSHMANN: Actually, the question was never answered, your Honor.

MR. FINCH: After Mr. Strickler interjected at that time the following question was asked:

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"Q Upon Mr. Orrick's statement to you, what conclusion did you reach?"

"A Mr. Orrick agreed -- and I think Mr. Oshmann confirmed this -- and as far as I got with him, that it was the feeling of the Department of Justice that this matter should be settled."

"One of the two of them said there are too many people around here living on this case for too long, and Orrick said that he felt very definitely that it ought to be settled and disposed of."

"He said that it ought to be done on a bargaining basis across the table by lawyers on a pro-

fessional basis, and I take it, there was some talk slightly directed at the Swiss, which had established sort of a track record for having sent over various emissaries whose qualifications or interests or background in the matter may have been questionable; but at any rate, they were not persona grata to the Justice Department, and he said, 'I am glad we have a business-like way to settle it,' or words to that effect. I can't recall the exact words.

"Q Your instructions were , at that time, to attempt to have full recovery as far as the Swiss were concerned?

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"A That was always a question. I wasn't quite sure what they would agree to. Every time you would pin them down, they would say 'restitution, just send back the shares and it would all be over, full restitution,' which I would say were formal instructions; but several paces formally short of that had been sort of shot down by the Swiss on the theory that they wanted full restitution.

"Q Can you explain that a little more fully about some were shot down. What were these suggestions?

"A Well, there had been some talk of a 50-50 settlement that originated, I think, in some of the committee hearings on the Hill, on this legislation

and the 50-50 formula was pretty much I guess a bit.

"The Swiss said that they had no growth; they wouldn't accept the 50-50 formula that I want.

"Q Did you ever see Mr. Orrick? Orrick to support that 50-50 formula for settlement then that?

"A He didn't say that either. There are a lot of other claims that affect the settlement question that had to be taken into account, like the tax claim and all the intervenors and those things that were more a matter of detail.

1585 "I can't say I can recall anything that Orrick
"said to me that would enable me to place a price
tax on the settlement he would be willing to agree
to, and I based my rather optimistic point of view
on the possibility of settlement on the fact that I
thought Orrick was an able and fair-minded official,
that I didn't see how he could swallow a lot of the
things that his department had done in the past, and
I thought that properly presented, Orrick would
have to come to some recognition of the justice of the
Swiss claims.

"Q Did you have any understanding with him as
to the time when an agreement might be reached, that is,
with Mr. Orrick?

"A I believe we had one talk in which we were talking about the possible interference of the legislation that was pending, and that I think led me to suggest that we ought to try to clean it up during that calendar year before Congress reconvenes in January 1962.

"Q What was his reaction to that?

"A As I recall, he agreed. We saw no reason why and we got down to business, and if we worked at it, we could straighten the thing out during that year.

"Q Do you know the terms of the ultimate settlement, approximately?

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"A I saw them when they came out and I don't recall them, no.

"Q Was it your understanding with Mr. Orrick that you could obtain as good or better a settlement than was ultimately obtained?

* * *

MR. STRICKLER: I would renew my objection, your Honor, on this point of time, speculative on the part of the witness.

* * *

(Deposition continuing):

"A I didn't have any understanding with Orrick on terms of settlement, so I can't answer the question.

"Q Were you instructed by Dr. Schaefer sometime during the course of the summer not to proceed further with settlement discussions?

"A. No.

"Q. Did you hear from Mr. O'Donnell in the course of this summer or fall, or any other relations being made by Interhem'el, or have you heard the name?

"A. Yes. I heard it in the summer and fall, and I said, 'Is this the same name as the name -- 'familiar to you?'

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"And I said, 'Not at all,' and I said, 'In what context?'

"He said, 'This is Interhem'el,' and I said, 'No, it isn't. Tell me if you can, why you ask.' And he said, 'Well, there is somebody supporting to reconstruct Interhem'el by that name, and I think you ought to look into it,' or words to that effect.

"This was in the late spring or early summer of 1961 and just before I was going abroad, and I didn't have a chance to do anything, but we were going to France on a holiday, my wife and I, so I called Schaefer from where we were, and I said I would like to come and see him in Zurich on our way back, which I did.

"MR. O'DONNELL: Would you mind marking this for identification?

(Photocopy of letter of Dr. Alfred Schaefer, dated Zurich, August 24, 1961, to Charles H. Wilson, Jr. Charles Spofford, as Plaintiff's Exhibit 178 for identification, as of this date.)"

THE COURT: Do I understand the original is probably with the original deposition, and is that your understanding?

MR. FISHER: Yes.

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MR. WILSON: Is this getting a today's number?

MR. O'DONOHUE: 178 is what it was marked there.

THE COURT: The original will be a part of the Court record, as I understand, when the deposition is received. It's not necessary to have another number.

Do counsel agree on that?

MR. STRICKLER: Yes, your Honor. It's coming with the deposition that comes into the Court House.

MR. WILSON: Your Honor, I think the reporter lists the exhibits at the end of the deposition, and I am reading upside down, but it looks like he used our numbers down here.

You showed me 178, didn't you, Mr. Fisher?

MR. FISHER: Yes.

THE COURT: That's what I say, still calling it the same number given at the time the deposition was taken, I assume.

(Plaintiff's Exhibit 178 marked

for identification with deposition

(Continuation of reading of deposition:)

"Q I show you what has been marked as Plaintiff's Exhibit 17? Can you tell me, can you tell me what it is.

1589

"A It is a letter from Mr. Wilson and Mr. Orrick, dated May, 1967.

"Q Now, you said that you were in Zurich while you were over in Europe, and can you tell us of that conversation, what was discussed?

"A I don't recall this, can you tell me the question?

"Mr. ORRICK: I offer this.

"Mr. STEINBERG: I have no objection to this coming in evidence.

"Q Now are you sent to see Dr. Schaefer in Zurich while you were over in Europe, and can you tell us of that conversation, what was discussed?

"A I think I testified to this on the previous occasion. I had not seen this letter at the time, obviously, but I had had that mysterious call from Orrick, and I reported that to him, and I said, 'Could you tell me what, if anything, this means?'

"He said, 'I don't know just how this got to Mr. Orrick, but I have been discussing the Interhandel matter with some other people, and in an effort to see if I can get to the Attorney General, which I have not yet so far succeeded in doing with you and Mr. Wilson.'

1590

"And I asked what the arrangements were, and he said this was not a permanent arrangement. It was just for the purpose of facilitating his contacts in Washington, and he assured me that in his view, this didn't substitute for the trusteeship or supplant me with Mr. Wilson, and he gave me the name of the man he had spoken to as a prospective intermediary.

"Q Who was that?

"A As I testified before, it was Prince Radziwill, of London.

"Q Did Dr. Schaefer at that time suggest that he was going to make any particular proposal to the Attorney General by way of settlement of the matter?

"A No. He sort of had the view that if he and the Attorney General could get in the same room, why they could somehow work it out, but he never let us know what it was that he was going to propose.

"Q Did you know he was going to propose anything specific?

"A We assumed he proposed full restitution, although he knew he wouldn't get very far.

"Q Did you urge him to come over or try to discourage him from coming over? What was the discussion in that respect?

"A If you are talking about the Zurich meeting

157.

I had with him, I think on a previous occasion, I think
 "in March, I had taken him to the fact I didn't think
 his point the Attorney General would be useful, and
 that he had different ideas. I had John Wilson,
 and I wanted to put it in front of him so that we could.

"I don't think his personal intervention
 was required. I don't think he very much cared for
 that view, but I don't know.

"On the time of this Zurich meeting, I was
 sort of shaken by the information he gave me as to
 the choice of his new intermediary, but I don't think
 I discovered the nature of his coming to the United
 States at all.

"Q Did you say anything to him about the pros-
 pects of settlement as far as your efforts were concerned?

"A I think I said, 'Look, if you will let us
 alone, I think by the end of this year, we could work
 out something with the Department of Justice, work out
 a settlement.'

"Q Did he ask you what you meant by way of a
 settlement?

"A I don't recall.

"Q Do you remember whether you told him what you
 had in mind as a possible settlement?

"A No, I don't recall that I did. I don't

1592 • "believe we got into that discussion at that time.

"Q Did he suggest---

"A You see, when you talk about a settlement, the fifty-fifty concept had sort of oversimplified the whole thing, because as soon as you got into it, fifty-fifty raised the question, 'Fifty-fifty of what?' because you had a lot of these peripheral, but important, questions like the intervenors and the tax question or the things in the background. So, I didn't have a chance to discuss that with him.

"Q Had your discussions with Mr. Orrick embraced those matters?

"A We mentioned them, yes, just by way of illustrating this was going to be a difficult hand to play. But Orrick didn't know any more about them as I did, or as much, and I knew very little at that stage of the game.

"Q Did he at that time suggest that you break off negotiations?

"A No. I'm sorry. He may have. He may have said, 'Until we see what comes of this other thing, maybe you better not press your discussions.'

"He didn't put it quite as bluntly as he did in that letter you just showed me, his letter of August.

1500

"Q Did he then come to this country?

"A He came later I. He came, I think, October.

"Q While you were still in the office to see the Attorney General?

"A Yes.

"Q What was the purpose of that?

"A Yes.

"Q When he was with you, who else was present?

"A Charles Wilson.

"Q Can you tell us---

"A And perhaps Mr. Foyen.

"Q Can you tell us of that discussion?

"A He told us that he had proposed to the Attorney General, that he made a specific proposal which involved assigning Interhandel's claim to some third person, I think it was a European investment bank he was talking about, or something I hadn't heard of before or since; and it seemed a rather strange and unworkable scheme to us as he described it, but we didn't talk very much substance with him at that time.

"Wilson and I were trying to make up our minds whether we should get out of the whole affair..

"Q Why was that?

"A Because of this step Schaefer had taken in

1594 "going to Prince Radziwill. This seemed to me to be, even if he intended not to deal through him, but just to use him as a leg man in Washington, or to open doors for him, this was obviously very tricky politically, and unprofessional, as far as we were concerned, and I thought if it got to the press or got to the floor of Congress, why there would be an uproar, and I thought Charlie Wilson and I ought to be completely disassociated from this way of dealing with the association, and Wilson agreed.

"Q Did he resign at that time?

"A Not until sometime later. But he decided to resign at that time.

"MR. STRICKLER: Can we fix the date on this? That will keep me from going back into a lot of it.

"THE WITNESS: It was about Thanksgiving time.

"MR. STRICKLER: 1961?

"THE WITNESS: Yes, October, November. It was quite late in the fall. I remember we walked up Park Avenue to the Links Club, and it was very cold.

"MR. O'DONOGHUE: Would you mark this as Plaintiff's Exhibit 179 for identification?

"(Carbon copy of letter of Alfred Schaefer, dated Zurich December 4, 1961, to Mr. Charles

10.5

"(Witness and Charles M. Orrick,
 Trustee of the Estate of
 [Name of decedent], as of
 [Date].")

Q Now, Mr. Orrick?

A Yes, Mr. Orrick. I believe that has been made.
 But I think I should like to see the original, and ask you
 if you could tell me what it is. That is a letter to
 you and Mr. Wilson from Mr. [Name] dated December 4,
 1961.

A That was shortly after he returned from the
 October-November trip which I have just testified to.

Q Was Mr. Wilson still acting as trustee at
 that time?

A He hadn't submitted his resignation at that
 time.

Q Do you know when he did submit it?

A Not until 1962. I don't recall the date.

Q Were you ever notified that the power-of-
 attorney to Mr. Wilson had been revoked?

A No.

Q Did he ever tell you that he had received any
 notice of its revocation?

A No.

Q Did Mr. Orrick ever suggest that the trusteeship,
 the power-of-attorney had been revoked?

1596

"A No, but I didn't, after the summer of 1961, I had no more contact with Orrick. I called him up when I got home, having been on that holiday and the Zurich conference, and I told him a situation had arisen which made it impractical for me to continue to represent Wilson, and I thought Wilson--- I don't know that I said Wilson was going to resign, but at any rate, I took leave of Orrick in the summer of 1961.

"Q Did you advise Mr. Wilson as his attorney whether or not you considered the action of Dr. Schaefer as violative of the power-of-attorney?

"A He never asked me for my legal opinion, but I am sure I said to him I thought it was right on its face quite inconsistent and in violation of it, yes.

"Q What effect did the visits of Dr. Schaefer have on your negotiations with the Department of Justice?

"MR. STRICKLER: Objection.

"You may answer, if you know.

- - - - -

MR. STRICKLER: I renew my objection, your Honor.

THE COURT: I will overrule the objection.

- - - - -

(Reading of Deposition was continued as follows:)

"A I don't know. The second visit was after my negotiations had been suspended. I never had any

"In the event, whether it is in any way, effect or not."

"Q Now, Dr. Schreffer, in the meeting, was there any introduction made of Dr. Schreffer or Dr. Schreffer to Mr. Wilson? Did Dr. Schreffer desire to know Mr. Wilson's name?"

"A Yes, I think so. Dr. Schreffer made a little speech after Mr. Wilson had signed some letters in connection with this, and he expressed a great appreciation, his warm hopes, for a final settlement, and he made a very complimentary remark about Mr. Wilson and the whole atmosphere was, they were very pleased that he consented to take this on, and Schreffer said so."

"MR. O'DONOHUE: No further questions."

* * *

"EXAMINATION BY MR. SPARKS:"

"Q You are acquainted with the fact that there was a meeting on December 2nd in Washington, 1960 with Mr. Townsend and others present, are you?"

"A I can't place that conference, but that was a period during which there were meetings with Colonel Townsend on rather frequent intervals."

"Q Did you attend any meetings with Col. Townsend in December of 1960 that you can recall?"

"A I believe I went to Washington--yes, I believe

there was one December 23rd or 24th that shows up in my diary that I looked at yesterday.

"Q Was this a meeting in Washington?

"A With Townsend, yes.

"Q Who else was present at that time and place?

"A As far as I recall, just myself. Who was present at the conference of the second, according to your information.

- - - - -

MR. STRICKLER: The answer just given by the witness, I think should stop after the word "myself." And it should read:

"Q Who was present at the conference of the second, according to your information? "

1601

MR. O'DONOGHUE: Then, what appears as the question is the answer. I imagine you're right.

- - - - -

(Continuation of reading of the deposition, with correction above-noted:)

"A There was a goodly number, including the Green group, Mr. Charles Wilson, Mr. John Wilson, Mr. Pryor.

"I was not at the conference. I definitely was not there. I had another major matter going along parallel all during that period in the spring of '61 which meant that I was not present at some of these

anytime now. But I remember that I, Daniel T. ...
several times during the ...

"Q Now about the ... time the year
began with the ... of ...
January 23, ... of time?

"A I don't think so.

"Q You consider ... even in
February of 1968 as sort of a ... administration,
did you not?

"A Yes, and beyond that. He was so grooved from
his years' experience with this thing, so grooved in his
thinking and reactions, that it was pretty hard to get
any information or any response out of Dallas Townsend.

1602

"Q Have you reviewed the deposition that you
gave on November 17, 1967 recently, sir?"

- - - - -

MR. O'DONOGHUE: That surely is the wrong date,
isn't it? Isn't it February 27, 1968?

MR. STRICKLER: Mr. O'Donoghue is correct.
The notice was dated November 17th and the Deposition was
given on February 27, 1968.

* * *

(Continuation of reading of Deposition, line 2, page 51:

"A I glanced through it last night. I guess you
could say I reviewed it. I didn't read it carefully,
I didn't have enough time.

"Q Did you notice any inaccuracies in there, or do you stand on it now?

1603 "A I didn't notice any inaccuracies. I could say "it again in a lot more words as I have today, but I didn't see anything that needs correction at the time it was given.

"Q I did notice, I believe, at page 30, and I would like to get some clarification, if I could.

"A Okay, read it to me and I will clarify it, if I can.

"Q It is an answer you gave where you said, 'I think my first contract was with Mr. Oehmann, because that was before Orrick's appointment.'

"Excuse me, I don't think there is anything needing clarification. This has to do--I now see--with the Kennedy Administration coming into power.

"A That is right. I officially couldn't get the Attorney General at that time. I went to Oehmann who was in his office, and Oehmann told me Orrick was going to take this over. I think I mentioned that earlier.

"Q Yes, you did.

"I believe you mentioned like to the effect that Robert A. Schmitz, the plaintiff in this case, felt like he had a cause to protect, either the United States or his family name or both.

"Did you intend to so characterize his attitude towards the trust?"

1008

"A Yes. Yes, certainly. I would say Schultz very long without stopping, but I think I am being rhetorical. I think I am being too long. I think I am being too long."

"I don't think he was. I think his father had been told of this matter. He felt his father had been unfairly treated, and I think he felt that he had, therefore, a sort of mission to see this straightened out."

"Q I believe you used that word "mission" in your direct examination."

"A Yes."

"Q Can you place the time any better than you did on direct examination as to when you first started conferring with Mr. John Wilson, concerning this trusteeship?"

"A No. It was sometime shortly after we got back from that Paris trip, and I can't really establish how long after."

"Q If I orient you that the Paris trip was on April 30 and the trusteeship was accepted by Mr. Wilson on May 23rd, is it your testimony that you discussed this matter with John Wilson in the interim period before acceptance, or was it after acceptance of the trust?"

power on May 23rd?

1605

"A I can't be precise about that. I rather think though, if I may say so, that it was after, because Dr. Schaefer had asked me not to disclose this to anybody here, including Mr. Wilson.

"Q What was the position of Mr. Robert A. Schmitz concerning the restitution of the property to the Swiss?

"A You mean---

"Q The percentage that should be returned on settlement basis.

"A I don't know that Schmitz had any personal views on that. He probably had views, but I don't recall what they were. He may have felt that restitution was due the Swiss.

"Q You have no recollection, though?

"A I don't at this point, but I took the view, and in this I think Orrick concurred, that neither extreme position was really practicable, neither full restitution.

"Q Do you remember any of the writings of Mr. Schmitz on this subject as to how this matter should be solved?

"A No, but you probably have some of my files.

"Q I have more than I need, sir.

"You mentioned a meeting with Mr. Orrick and

with Mr. Schaefer in 1961, which you did not attend.

"A. That is right.

"Q. Did you see him in 1961 or in October?

"A. That is the only time I think.

"Q. Now, you said that he asked to attend, and you said because of some other people?

"A. I cannot say for a fact that, but I had in the early part of '61, taken on a job in which the World Bank and the State Department -- I was very active with that -- and a great deal of my time during those months had to be spent on that job, and I think I had a conference in one of the other of those places that conflicted with the Orrick-Schaefer meeting.

"It is the only way I can account for it, because normally I wouldn't have let Schaefer go to a meeting with Orrick without being along, but I think John Wilson was there, which made it possible.

"Q. You took a vacation trip to Europe during the summer of 1961?

"A. Right.

"Q. Can you establish the dates when you left and returned?

"A. Not exactly without looking at my diary. I think we were abroad during the month of August.

"Q. Do you know how long you were abroad?

"A. One month, give or take a week or so.

1607

"Q I have a notation in a letter, I believe from Mr. Wilson to Mr. Schaefer, that you were due to return from your holiday about September 11.

"Q That would be it, yes.

"Q Do you remember that that is about accurate?

"A I think that is right.

"Q That would mean you left about August 11 or thereabouts?

"A Probably about the first of August.

"Q You have mentioned meeting with Dr. Schaefer in Zurich, and discussing the then activities of Dr. Schaefer to try to effect some settlement himself?

"A Yes.

"Q Do you recall any of the substance of the proposal of Dr. Schaefer at that time being related to you?

"A No.

"MR. STRICKLER: Would you mark this as Defendant's Exhibit 62.

(Photocopy of letter of September 18, 1969 to Dr. Schaefer from Charles Spofford, marked Defendant's Exhibit 62 for identification, as of this date.)"

MR. STRICKLER: Letter of September 18, 1969 --
that is in error. May we make that correction?

16-6

THE COURT: The article covers 11 to '63,

you said.

MR. STRICKLER: Yes, that's correct.

MR. STRICKLER: I would ask you to read from Mr.

Spofford to the court, please, the document marked Exhibit 62.

THE COURT: (Addressing the witness.)

(Photocopy of document dated:

"BY MR. STRICKLER:

"Q Mr. Spofford, I show you a document marked Defendant's Exhibit 62 for identification. You may read the whole of it if you like.

"I call your attention specifically to page 2, the first full paragraph and the third full paragraph on those pages.

"MR. STRICKLER: I would ask you to mark this document as Defendant's Exhibit 63 for identification.

"(Photocopy of document dated October 6, 1961 to Dr. Alfred Schaefer from Charles Spofford, marked Defendant's Exhibit 63. for identification, as of this date.)

"BY MR. STRICKLER:

"Q You have now read the passages referred to?

"A Yes.

"Q Does this refresh your recollection as to

1609 "whether or not any of the details of the Schaefer proposal as of this time were disclosed to you in your trip to Zurich?

"A Well, from that letter they must have been, but I have absolutely no recollection of them.

"Q One question has occurred to me, concerning your vacation trip and the letter of August 24, 1961.

"Inasmuch as this letter was received while you were overseas, what was it that called the letter to your attention so that you set up an appointment with Dr. Schaefer?

"A Well, I didn't know about the letter until I got back.

The thing was Orrick's mysterious call to me when I went away on vacation, June or July, asking me if I knew some name he mentioned, and he said apparently somebody else had gotten into it from the Interhandel side, so that put me on inquiry.

"Q Did you play any part in setting up the October 30th or October 31st meeting between Mr. Schaefer and the people at the Department of Justice, namely the Attorney General?

"A Well, from that letter, I gather that I talked to Orrick about it, and Orrick, I think, was instrumental in doing it.

201

"Well, officially, I know I will be written into the act, but as the lawyer I have told all, he was doing it for me, and I am not in any condition, which is a matter of fact."

"Q Now, through the letter, I have just read through the letter, I am sure, I am sure Mr. Spofford, that the letter is dated the 1st of June, 1907, and is dated June 1st or 2nd?"

"A According to the letter which I have just read, yes. That is, it must have been written then I can recall it."

"Q Do you recall sending a telegram to Mr. Spofford asking him that the appointment had been made?"

"A Well, again relying on that letter, which I have just seen---

"Q I show you a telegram and see if it refreshes your recollection, Mr. Spofford."

"A Yes, that is the one that is quoted in the letter."

"Q This is a telegram from you?"

"A Yes."

"MR. STRICKER: This has been part of our stipulation, I wouldn't go through the formality of marking it in the record here."

-- -- -- -- --

1611

MR. STRICKLER: I have forgotten the number,
but that telegram is now in evidence, your Honor.

- - - - -

(Continuation of reading deposition:

"Q Did I understand you to say it was late 1961, some-
time in 1961 that Mr. Wilson decided to resign his
trusteeship powers?

"A I think so, yes, although he did not
actually resign until considerably later.

"Q The formal resignation I think was sometime
in early fall.

"A Spring of 1962. I think in May '62, it was.

"Q Did you have any knowledge of a letter from
Mr. Schaefer terminating the trusteeship powers in
February of 1962?

"A Yes. I remember Wilson got it. He was very
surprised and shocked. He showed it to me and it
didn't shock me so much, because by that time I observed
Dr. Schaefer in action, and nothing would surprise me.

"MR. STRICKLER: I have no further questions.

"MR. O'DONOGHUE: It is agreed between counsel
and by the witness that signature will be waived in
his deposition. "

"Time noted 4:55 p.m.) "

- - - - -

1611

MR. O'DONOGHUE: I would offer Plaintiff's Exhibits 62 and 63 in evidence.

THE COURT: All right, received.

(Plaintiff's 62 and 63 received.)

MR. O'DONOGHUE: I would offer Plaintiff's

Exhibits 64 and 65 in evidence, and I think there is no objection to that.

MR. O'DONOGHUE: I have no objections.

THE COURT: They will be received in evidence.

(Plaintiff's Exhibits 177 and

178 were received in evidence.)

* * *

THE COURT: You are ready?

MR. O'DONOGHUE: Yes, except for some exhibits that have not been received.

MR. WILSON: You'd like us to identify them for you?

MR. O'DONOGHUE: Yes, I would. Plaintiff's 151 and 152.

* * *

1614

THE COURT: Without objection, they will be marked as received in evidence.

(Plaintiff's Exhibits 151 and 152

were received in evidence.)

MR. O'DONOGHUE: And may I back up one minute about resting? There is one thing -- We issued a subpoena

duces tecum to Mr. Wilson on, I think, January 13th asking for certain things, some of which have been supplied and some not. We asked for an original executed copy of Trustee's Powers offered to C. E. Wilson on April 30, 1960, accepted by him on May 23, 1960, and subsequently returned to Defendant corporation.

MR. WILSON: Mr. O'Donoghue, in compliance with that, I hand you the originals of two documents, copies of which are already in evidence under some numbers. I wonder if we shouldn't associate the numbers with these two documents?

1615 MR. O'DONOGHUE: You see, your Honor, the ones in evidence as 47 and 48 are not the original, executed copies of the Resolutions and the powers, which of course were returned by Mr. Wilson, and I would like to---

THE COURT: Is there any difference between the originals and the copies?

MR. O'DONOGHUE: Only that they are executed. I don't believe there is any difference.

* * *

MR. O'DONOGHUE: I would offer them in substitution of 47 and 48.

THE COURT: Would you have any objection for their being offered in substitution?

MR. WILSON: No, your Honor.

THE COURT: Give them the same numbers and substitute them for the ones you had.

1656

Mr. O'Donoghue: I have not received.

Mr. Wilson: I have not received this

And I believe that the only one who delivered
this is the one who delivered it.

Mr. O'Donoghue: I have not received.

Mr. Wilson: I have not received, "all correspondence
between Defendant Corporation and/or its individual
officers and/or its attorney, on the one hand, and Police
Bureau." I have not received. "There is no correspondence."
Mr. O'Donoghue didn't know this when Dr. Schaefer was
on the stand, but he would agree that there is no such cor-
respondence. I have been assured there is none.

Continuing on: " . . . and/or Attorney General
Kennedy and/or any other employees of the U.S. Department
of Justice between November 8, 1960 and October 1, 1962."

We have given them all we have on that subject,
which is nearly a dozen pieces.

MR. O'DONOGHUE: And that's all?

MR. WILSON: That is all.

Number 4: "Letter from John J. Wilson to
Defendant Corporation and/or Dr. Alfred Schaefer dated
December 7th" -- that should be December 2, 1960.

I gave that to Mr. O'Donoghue under an oral agreement
with him that this would not constitute a waiver generally
of the lawyer-client privilege, and I think I gave you

1657

at the same time -- although you may have had it -- Dr. Schaefer's reply to me of December 7, 1960.

MR. O'DONOGHUE: Yes.

MR. WILSON: So, we have complied with Number 4.

Number 5: "Copy of document delivered by and/or on behalf of Defendant, rather its Trustee, C. E. Wilson to the Department of Justice or to any official thereof in October or November 1961 proposing settlement of the GAF controversy."

There is no such document, according to Dr. Schaefer.

Number 6: "Copies of any and all resolutions of the Board of Directors of Defendant corporation subsequent to May 23, 1960 bearing upon the mandate accepted by C. E. Wilson on May 23, 1960."

May I read two of them together because I want to discuss both of them?

Number 7: "Copies of any and all resolutions of the Board of Directors of Defendant Corporation approving settlement of the GAF controversy."

If your Honor please, these two requests, mind you, copies of "any and all resolutions of the Board of Directors... bearing upon the mandate..." and the second "approving settlement." There is a great deal of preliminary

1618 discussion by lawyers. On one occasion, On July 14, 1961, I attended the Board meeting in Zurich, and my remarks are

[illegible]

THE GOVERNOR: Do you want to respond?

MR. O'DONNELL: That would comply with the request.

MR. WILSON: All right. Let me hand you at this time, if I may, please, the following -- and these are excerpts in a literal sense. I mean by that, I haven't paraphrased anything. I have just cut these actually out of the Minutes -- the August 29th, 1960 meeting of the Board.

I hand you three pieces of paper, sir. Do you want to have these marked?

1619 MR. O'DONOGHUE: No, I don't think they should be
marked.

MR. WILSON: You do what you please with them.

THE COURT: You are not proposing to offer them in evidence?

MR. O'DONOGHUE: I don't know.

THE COURT: You don't know until you read them?

MR. O'DONOGHUE: I won't know until I translate them.

MR. WILSON: I next hand you---

MR. O'DONOGHUE: May I interrupt, Mr. Wilson, and ask you if you happen to have translations of these?

MR. WILSON: No, I had to translate them myself. Do you want me to tell you what they say?

THE COURT: Not now.

MR. WILSON: I hand you a portion of a page, I guess you should say, of page 11 of the April 12, 1961 Minutes of the Board.

On each occasion, I have written myself on the page, what page it is from the totality of the Minutes and what date the meeting was held. This was no simple task!

MR. O'DONOGHUE: May I ask if these two documents you have just given me comply with Number 6 in that request?

1620 MR. WILSON: I think, Mr. O'Donoghue, that by their dates, in the early periods, from '60 on, up until settlement was approved, that it is more or less indicative that the earlier dates have to relate to number 6.

I hand you next, a portion of page 3 of the

Minutes of June 7, 1961. I have read a portion of
 page 1 of the Minutes of June 7, 1961. It doesn't look
 like it, but it is.

Your Honor, I have read an extract from
 the Minutes of June 7, 1961, page 1 of page 6.
 I want to say to your Honor, however, I discussed
 with me -- the subject of the Minutes. I will be very happy
 to read it to the Court. I will be very happy to read it to the Court.

THE COURT: I assume you don't mention his
 position, do you, Mr. O'Donoghue?

MR. O'DONOGHUE: No. I have no occasion to do so.

MR. WILSON: I want to say that we were to
 accommodate with procuring a translation if this ever becomes
 material. I have one of the best translators available to
 me.

I now read Mr. O'Donoghue portions of the Minutes
 of November 6, 1961 meeting, pages 1 and 2, and portions of
 pages 3 and 4.

1621 May I also say, if the Court please, that we have
 not been too rigid as to whether it was a discussion of
 Mr. Wilson or whether it was a resolution. In other words,
 we did not too tightly adhere to the language of the
 request. I wouldn't say this was an absolute rule, but
 I know there were occasions when we are giving up things
 which are not strictly resolutions.

Mr. O'Donoghue, I hand you next, with respect to the Minutes of the Board of March 4, 1963, a portion of page 3, all of page 4, all of page 5 and the concluding page 6.

With respect to the minutes of August 22, 1963, I hand you, sir, the opening page, all of page 2 and most of page 3.

And, finally, with respect to the Minutes of March 4, 1964, I hand you the opening page, all of page 2, and a portion of page 3.

MR. O'DONOGHUE: Thank you.

MR. WILSON: If your Honor please, the next and final item is a copy of the letter written by Benjamin Javits to the Defendant Corporation to Dr. Schaefer, October 26, 1961. For some strange reason, nobody can find that letter. I know I have a transmittal to me of a copy of it, but---

MR. STRICKLER: I am sure that letter is among the documents that I examined from Mr. Spofford.

MR. WILSON: All right.

1622

MR. O'DONOGHUE: No, it isn't.

MR. WILSON: Couldn't find it?

THE COURT: I understood you to say it was among the papers---

MR. STRICKLER: I have an idea it is. As I recall, Mr. Javits was forwarding any correspondence he had

will be done by Mr. Spofford. I will look right now and make this out.

MR. O'DONOGHUE: The fact is that he can't not find any in connection with the latter of trust-
 with the fact that he is not a trustee. I would be
 definite that it is the best it is the best
 thing that I can find in the file. Just
 because it is a fact is no reason to call it the
 thing to do.

THE COURT: You have anything further, Mr. O'Donoghue?

MR. O'DONOGHUE: I was going to say merely that
 there is a reference to it in Mr. Spofford's file. There is
 apparently an enclosure there. We haven't got it, so if Mr.
 Spofford's file seems incomplete, that's one example.

THE COURT: Are you prepared to state what your
 position now is with respect to closing the case?

MR. O'DONOGHUE: I would like a little opportunity
 to look over these documents since they are in German. I don't
 1623 think any of them are actually resolutions of the Board
 respecting the Trustee, in my glancing at them, so I probably
 would not want to use them. So, if I could have a little
 time to look at them--- It requires a bit of translation.

THE COURT: I was going to say, why shouldn't
 you rest with the understanding that if you choose to

reopen the case solely for the purpose of offering the papers---

MR. WILSON: This is quite agreeable, and I should have made this further explanation, that the resolutions of the Executive Committee of the Board are not amongst them because those were not treated as Minutes of the Board, and so they will not be found amongst them.

THE COURT: We will take a short recess at this time.

(Short recess.)

MR. O'DONOGHUE: If I have not already done so, the Plaintiff rests, subject to the right to offer those documents that Mr. Wilson just supplied to me, in case they seem interesting.

THE COURT: Very well.

MR. WILSON: Would you mark those five papers together? And staple them together?

THE DEPUTY CLERK: Defendant's Exhibits 73-A through 73-E marked for identification.

* * *

THE DEPUTY CLERK: Defendant's Exhibits 74, 75, 76 and 77 marked for identification.

* * *

MR. WILSON: May it please the Court, with reference to this Javits' thing, which I want to say is a complete "red herring" in this case, has absolutely nothing to do with it---

MR. O'DONOGHUE: That is all, I object to it.

THE COURT: All right, I will take that.

MR. O'DONOGHUE: I have no objection to the admission of these documents, which relate to the subject of the case, and I would like to see them in the record.

MR. O'DONOGHUE: Now I examine them?

THE COURT: Yes.

MR. O'DONOGHUE: (Examine documents) I have no objection.

THE COURT: Without objection, they will be received.

1625 MR. O'DONOGHUE: I can't take the time to read them. They are not worth it.

If your Honor please, the next offer in evidence under a stipulation with Mr. O'Donoghue, Defendant's Exhibit Number 78 for identification, which is a letter from Mr. Spofford's substitute secretary, Mrs. Alma Bertolotti, dated September 1, 1961, addressed to Mr. Spofford in Paris, and reading as follows:

"Dear Mr. Spofford:

The enclosed is just to bring you up to date on the Interhandel matter. Mr. Pryor has seen both the August 24th letter from Mr. Schaefer

and Mr. Wilson's reply of the 30th. You will be pleased to know, I'm sure, that Mrs. Ludy has recovered from her illness." That was his regular secretary. If your Honor please, this establishes---

MR. O'DONOGHUE: I don't think---

THE COURT: No, no. You offer it in evidence?

MR. O'DONOGHUE: I have no objection.

MR. WILSON: I think I should be permitted to say that the August 24th letter from Dr. Schaefer and Mr. Wilson's reply of the 30th are exhibits P-143 and 144.

THE COURT: Very well.

MR. WILSON: May this be received in evidence?

* * *

1626

MR. WILSON: The next Defendant's Exhibit for identification, 75, is a cable by Mr. Spofford from Paris, dated September 6, 1961 to Mr. Pryor, at his New York law firm reading as follows:

"SPENT INFORMATIVE USEFUL DAY ZURICH.

ADVISE WILSON REGARDS."

We offer this in evidence.

MR. O'DONOGHUE: I have no objection.

THE COURT: Without objection, it is received.

* * *

MR. WILSON: We offer in evidence the next Defendant's Exhibit, Number 76 for identification, which is the letter from Mr. Wilson to Mr. Spofford dated October 5,

1960. I told the jury of this; only the first paragraph on the record is all that is in his interest in the matter.

1627 MR. WILSON: I am offering it in evidence that the defendant is a witness. I don't think it's enough to say that he is a witness. He might do some in the future. I am not offering a witness on this case. I think that's known to me.

MR. WILSON: You offering it in evidence, Mr. Wilson?

MR. WILSON: Yes, I am offering it in evidence.

THE COURT: It will be received.

MR. WILSON: May I read the paragraph?

THE COURT: It will be read.

MR. WILSON: May I read this paragraph?

THE COURT: You may.

MR. WILSON: "When you see Dr. Schaefer, you may have some discussion about Schmitz. I understand Bob is actually writing a check from Interhandel. He desperately needs the money, which he claims Dr. Schaefer had promised to send him. I would much rather have any remuneration due Schmitz handled through Dr. Schaefer rather than the Trustee, for reasons you know."

THE COURT: Who is the letter from?

MR. WILSON: By Mr. Wilson to Mr. Spofford on October 5, 1960.

Finally, Defendant's Exhibit for identification 77 is a letter from Dr. Schaefer to Mr. Spofford dated October 16, 1961, which I offer in evidence.

* * *

THE COURT: Without objection, it is received.

* * *

MR. WILSON: Now, may we read the earlier Spofford deposition? And I would ask Mr. O'Donoghue if he would let us have his copy.

* * *

MR. WILSON: * * *

If your Honor please, this is the deposition of Charles M. Spofford taken by the Defendant pursuant to notice and stipulation, in New York on February 27, 1968. Mr. O'Donoghue was present for the Plaintiff.

* * *

1629

"DIRECT EXAMINATION

"BY MR. WILSON:

"Q Please state your name for the record, Mr. Spofford.

"A Charles M. Spofford.

"Q And your residence address, if you don't mind.

"A 120 East 78th Street, Manhattan.

"Q You are a member of the Davis, Polk firm, are you not?

"A I am.

"Q Now, I am going to ask you to look at the deposition again?

"A Yes, sir.

"Q Now, you are going to read the deposition of Mr. Wilson, is that right?

"A I have read it, yes, sir.

"Q Now, you are going to read what he referred to Mr. Wilson as his counsel, referring him in connection with the anti-trust matter?

"A That's right, as his counsel.

"Q As his counsel?

"A Yes.

"Q I'd like to refer you to the paragraph that I read from Mr. Schmitz' complaint, which is No. 14. Before I ask you that, in the performance of your responsibilities as Mr. Wilson's counsel, did you have occasion to contact the government officials who had something to do with the subject matter?

"A I did, yes,---

"Q Did you--

"A (continuing) -- on various occasions.

"Q Did you accompany Mr. Wilson or he accompany you on any of these visits?

"A I don't recall that we ever went together. We may have on one of the early talks with William Townsend,

we may have been there at the same time, but I think the important ones, I don't believe we were together. I went down and spoke for him.

"MR. C. E. WILSON: That is right, and when I went down on several occasions, I went alone.

"THE WITNESS: Is the record clear on that?

"MR. WILSON: I think it is.

"You got Mr. Wilson's interpolation, did you not?

"THE REPORTER: Yes, sir.

"BY MR. WILSON:

"Q I won't re-read this paragraph, but I will put it in the form of a question, Mr. Snofford. I refer to Paragraph 14 of Mr. Schmitz' complaint.

1631

"To your knowledge, either from directly hearing it or from being told by Mr. Wilson, was any offer of settlement made to you or to Mr. Wilson in 1961 or at any other time by the Department of Justice for the Department to pay 75 percent--

"MR. O'DONOGHUE: I object to that question.

"BY MR. WILSON:

"Q (Continuing) --to interhandel of the proceeds of the sale of the stock of General Aniline & Film?

* * *

1632

"A I will answer that in two parts:

"As to what may have been communicated to Mr.

directly, so that I can't say that I was in full on the
 subject of the matter.

Q Now, after the meeting, no other of the
 participants in the meeting were asked to make
 any statement?

A Yes, after the meeting, I did go to you by way
 of the telephone and I received the return of all the
 stock of the company of Interhandel Interhandel
 to the company in exchange for the

"A Yes.

"MR. HILF: You may cross-examine."

1634

"CROSS EXAMINATION

"BY MR. O'DONOGHUE:

"Q Mr. Spofford, do you remember when you first
 came into the picture of counsel for Mr. Wilson in this
 trusteeship?

"A I can remember the time and the occasion, but I
 don't remember the exact dates.

"Q Well, approximately when was it, in relation to
 the Paris meeting, for example?

"A Well, Mr. Wilson and I both sat on the board of
 Guaranty Trust Company of New York, and I remember after
 one board meeting, he took me aside and said that he was
 getting into a complicated situation involving Swiss inter-
 ests, and mentioned Interhandel and if it went through, he

would like me to -- to act as his counsel.

1635

"Well, with the word Interhandel, my ears picked up, because, as a lawyer, I was familiar with the fact that that Interhandel had been kicking around the courts for a generation or so and it sounded interesting.

"So, we talked about it perhaps, oh -- these meetings were held every other week -- a couple of times maybe subsequent to that over a period of perhaps six weeks, two months, and then he asked me to come up to his office, I believe, or perhaps he came down here and said that he was seriously considering taking the responsibility of trying to work out a settlement. And this would be -- it was a most complicated affair, it was an affair that involved a lot of law, legal considerations, and he, therefore, would need advice.

"And he wanted me to find out what I could about it from my own sources, and then he prepared to go with him, because he might have to go abroad on it.

"Well, some weeks later he did go abroad and that's the Paris meeting to which reference has been made earlier in this deposition.

"I accompanied him to the meetings in Paris and that is the moment I suppose at which I became formally -- formally involved, because he did receive the power of attorney and he asked me to act for him, and I began act-

ing he wanted the price of about \$100.

"Q Prior to that time, did you know Mr. Robert Schmitz?

1636

"A I think so. I think I was told of Mr. Schmitz and I think I met him with Mr. Schmitz was in a meeting with Mr. Schmitz, either just before or just after the meeting that took place the morning of, the 10th of May, 1944, with Dr. Schmitz present and which was a very important meeting.

"Q Where?

"A What?

"Q I thought you had finished and evidently you had not.

"A Yes. But I think it was then that I first met Schmitz in Paris.

"Q Did he participate in the meeting with Mr. Schmitz and Mr. Wilson?

"A He did.

"Q And in what capacity did it appear to you that he was acting?

"A Well, I did not know -- Mr. Wilson had already told me about Mr. Schmitz and had said that he had a very deep and long-standing personal interest in the problem and had, because of his father's position with Interhandel, because he had been working on this claim of Interhandel

for some time, and I didn't have any occasion to -- we did not square off and choose up sides -- I didn't have any occasion to inquire into the capacity in which he was acting.

1637

"Q Well --

"A I am clear that he was, he was not acting for the U. S. Government.

"Q He was acting for Interhandel?

"A He was acting for Interhandel in some capacity and obviously enjoyed the confidence of Interhandel from the things Mr. Wilson had testified to.

"But I -- there was no issue, there was no occasion to think about just what his capacity was.

"Q There was no conversation then with Dr. Schaefer in which he said anything about his capacity.

"A Not that I recall, and I have searched my recollection on this because I know it's a rather important point and I don't recall any discussion of his capacity at that Paris meeting.

"Q Was there any suggestion that he would be made available to you, as counsel for Mr. Wilson, to supply information and act as a go-between?

"A Not act as a go-between, but to supply information. He was obviously brimming with background and information on this and he volunteered -- I think that's my first conversation with him -- to be, to fill me in on

dislike, I don't think I would have liked. But I don't think

that is a fair statement of it.

1637 "Q Now, from the time you went thereafter on a number of occasions?

"A Yes, sir.

"Q How many times did you go there?"

"A Oh, I don't say. But every couple of weeks, I would go over and just talk with him and his wife.

"Q Did you ever see him --

"A I was aware of his presence at all times, because he was anxious for progress and anxious to be helpful, I think, as he defined the term, and he was in touch with me, not quite as much as Mr. Wilson, but very frequently.

"In fact, at one time I had to say, 'Look, I have to do this my own way and I am working for Mr. Wilson and it may not be going quite the way you want it, but this is the province of every lawyer to choose his own methods and his own pace to go ahead.'

"Q Did you go with him or meet him in Switzerland thereafter?

"A I went over -- one thing Dr. Schaefer did make clear either through Mr. Wilson or directly -- I don't think directly to me -- is that he would be delighted to see either of us over there to discuss any aspects of the case. And I went to Switzerland, I think at my own suggestion, to discuss this case -- a, factual document that

1639 I found it necessary to prepare, and went rather deeply into the background, and I wanted -- I wanted someone in Interhandel to see it before we showed it to the government, which we then intended to do. And I went to Zurich and went over it -- I know Dr. Schaefer saw it, but my initial contact was with Mr. Ulrich Wehrli and Mr. Schmitz was in Zurich when I got there and he sat in on some of the conferences and he participated in the drafting or redrafting of this document.

"Q Was that the only occasion when you were with him in Switzerland?

"A I think so.

"Q Now, at the Paris meeting, to return to that, you were shown a rather long resolution of the board of directors of Interhandel, were you?

"A Yes.

"Q Did you review that document?

"A I did.

"Q Was it with the notion that you would approve of it or consider its sufficiency?

"A Well, Mr. Wilson was then getting into formal relationships and he wanted to know what these papers all meant, what it was about and what I thought of them. So I reviewed it with a view to answering his questions.

"Q Was there any indication at that time of the

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authorities of the ...

"A ... to understand that he ... they had been ...

"Q ... by the ...

"A ...

"Q ... of ...?

"A ... Wilson that though they were over-verbose and not quite the style I was accustomed to, that as far as I could see, he did not assume any additional responsibilities by reason of those two facts which -- and I didn't insist on re-drafting them or --

"Q That was true of the power of attorney as well?

"A The power of attorney and the resolutions. They bore evidence of both having been drafted by the same person.

"Q Were they adequate, in your view?

"A Well, my one comment to Mr. Wilson, I think, was that these are so adequate that he'd better think twice before taking on this rather frightening responsibility of having the power to take over and dispose of, solely in your discretion, of this very valuable asset. Suppose you do get it, you've got a bear with a tail here.

"The breadth of the authority worried me.

1641

"MR. C. E. WILSON: That is right, I remember your telling me.

"BY MR. O'DONOGHUE:

"Q Now, in the course of these negotiations with the U. S. Government, did you have any special instructions as to what terms would be acceptable to Interhandel?

"A Well, I had no instructions, no, no parameters, no guidelines. But I knew from talking with Mr. Wilson and from Schmitz that Interhandel wanted the whole property back, period, restitution.

"Q And did there seem any prospect of getting anything close to that at any time in your dealings?

"A There did not to me, no.

"Q Did you get any offer at all?

"A I got no offer from either --

"Q Did you make any offer?

"A No. My -- no, I did not. I made no specific offer. If by an offer you mean one, two, three, four with the terms, financial terms, I made no offer.

"Q Did you make them in any general terms?

"A I had a series of discussions. Our contacts with the Department of Justice fall in two parts. First, we talked with the lame-duck Department, the people that were going out of office, which really meant Dallas Townsend; and I came to the conclusion that there was not much

1643 discussed how that ought to be handled, whether that was a good or bad thing, and found ourselves in agreement on that.

"So the nature of my talks with Orrick at the beginning were exploratory, but I think they boiled down to a feeling that we had pretty much a common view of the situation and thought that within the limits which were not then defined, that a settlement could and should be worked out in the course of that calendar year, before Congress reconvened in January.

"Q What year was that, 1961 or 1962?

"A 1961, yes, the first year of the new administration. And I had great respect for Orrick. He was a practical fellow and although he did not know much about this case, he did know that there had been, as he put it, a lot of people had been living on this case for a long time in the Department and 'I think we ought to see if we can put a stop to it.'

"Q Well, now, did you feel you were making progress toward a settlement in your judgment at that time?

"A This is entirely a matter of judgment and not a fact."

"Q Yes?

"A It was my feeling that I was making progress and

1944

that if there was no way of getting away from Zurich, as Mr. Wilson had suggested, I believe we could have worked out a settlement in the interim.

"Q And what would have been the basis for this, in your judgment, the settlement would have been satisfactory to Interhandel?

"A Well, I don't know whether a settlement, if in fact it had been made, would have been satisfactory.

"Q What was the basis?

"A Yes, I thought the attitude, the timing, the persons that we had to deal with and the logic of it, all pointed toward the belief that there was a settlement and I was very hopeful of being able to work one out.

"Q And what happened with regard to Zurich?

"A Well, Mr. Schofer decided on a different channel of approach to the Department of Justice and without advising us, and when I learned about it, I told him we couldn't go on, we can't have -- I was first apprised of this by the Department of Justice itself.

"Orrick called me up and asked me who this fellow was and I said 'I never heard of him,' and he said, 'Well, he's representing Interhandel.'

"And this I made note of -- I was going abroad shortly thereafter and I went to Zurich, talked to Dr. Schofer and voiced objection to this development and

1645 that went on, and we -- I came to the conclusion that we couldn't -- we couldn't work with the Department, if there was somebody else in the field.

"MR. WILSON: Excuse me a minute, Mr. O'Donoghue.

"Mr. Spofford, did you say that this fellow, you had never heard of him --

"THE WITNESS: Oh, I had heard of him, but not in this context.

"MR. WILSON: Who was he?

"THE WITNESS: I am hesitating, Mr. Wilson, because it's a well known name and I don't want -- this is not to become public in any sense, is it?

"MR. WILSON: Yes, it is.

"THE WITNESS: What?

"MR. WILSON: Yes, it is. You mean -- are you speaking of an individual who went to the Department of Justice as a representative --

"MR. O'DONOGHUE: Excuse me, Mr. Wilson, I am cross-examining now.

"MR. WILSON: Yes, but I have got to understand the answer and I object to it until I understand it.

"MR. O'DONOGHUE: You can re-examine him, I would think, if something is not clear to you or if you --

"MR. WILSON: If you prefer. If you prefer.

164: "I want to inquire -- I want to inquire --
 165: clear."

"A. Yes, I did."

"Q. Or did you not say that?"

"A. Yes, I did."

"Q. Now, I think I should ask you -- I am interested
 166: in the fact that you said that you will give you
 167: the name of the person who is in charge of the
 168: the person who is in charge of the job."

"A. Yes, I did."

"Q. And Mr. Schaefer told you -- oh, the Department
 169: of Justice told you that he was intervening on behalf --

"A. No. They said there was another intervention,
 170: but the identity of this man I learned from Schaefer in
 171: Zurich."

"Q. And did you then advise Mr. Charles Wilson of
 172: this situation?"

"A. I did and of the what I considered to be a
 173: major change in the whole project as a result of it."

"MR. C. E. WILSON: That is right."

"Q. Did this have an effect on your negotiations;
 174: did you determine to break them off?"

"A. Well, I did not see -- I told Orrick -- well,
 175: look, I told Orrick I was not going to discuss it further
 176: with him until I was sure what my authority was, and I

1647

thought it had been rather undermined by this other development. Mr. Wilson's authority, really, because I had none on my own.

"Q Well, did you recommend that Mr. Wilson resign the trusteeship?

"A I said we ought to talk to Schaefer and when Schaefer came to the country, we did talk to him and that led to our -- Mr. Wilson turning in his uniform.

"Q Could you tell us something of that discussion with Dr. Schaefer?

"A It was late in the fall. My impression was that it was around Thanksgiving time, because I remember we walked up Park Avenue, it was quite cold, and I think we went to the Links Club.

"THE WITNESS: Didn't we?

"MR. C. E. WILSON: That's right.

"A (continuing) And we -- I don't recall the details of it. Our general position was that this wasn't quite playing ball with us. We tried to be on a perfectly forthright basis with them and Mr. Wilson could hardly be expected to work things out by himself or through me or in any other way, if this approach which I considered highly unusual, if not improper, was being -- was parallel to ours.

"Q Now, you know, of course, of the final settlement

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and I don't know if this --

"A. I don't know if this is the case. I recall it being the case at one time, but I don't know if it was the case at the time it was --

"Q. Now, you said that you were feeling a 50/50 settlement was the best that could be achieved at that time, is that right?

"A. Well, I think I was feeling a little better than that, but I don't know if that was the case.

"Q. And you were not at all sure of that and no more?

"A. Yes.

"Q. Was it -- is it your opinion now that you were working toward a better settlement than the one ultimately arrived at?

"A. It is my opinion that, yes, because we had been told that 50/50 would be wholly unacceptable to people we were representing and I was under the impression that we could have had a 50/50 settlement even from Dallas Townsend, but I wouldn't want to say that for a fact.

"Q. So before Prince Radzwill's intervention, you considered that you were heading toward a better settlement than the one ultimately achieved?

"A. Well, I have already stated what my feeling was, however relevant that is, but I thought we were in the right frame to get a satisfactory settlement. We had a

1649

good man to work with; he and I agreed that it's a matter that ought to be settled; that both sides, the extreme position on neither side could prevail; and we also agreed -- and this I guess I didn't say before -- that it should be done on a professional basis between the lawyers and now through stray intermediaries which Interhandel had tried early, oh, long before we got into it, and in which this intervention I have just mentioned was another example, but that was not the way the U. S. Government would be best approached; that it should be approached on a professional basis by people who knew the facts and had the responsibility.

"MR. O'DONOGHUE: I have no further questions.

* * *

1650

(Reading of deposition continues)

"BY MR. WILSON:

"Q Mr. Spofford, to a degree I seem to be the forgotten man here today. Do you remember my working with you?

"A I do, yes, I remember it very distinctly, and we spent many long hours here and in your Washington office.

"Q And also with Mr. Pryor, sometimes in your absence with Mr. Pryor?

145:

"A That is right. You are not by any means forgetful, John.

"Q Do you remember that you remember the first meeting in the office of Mr. Wilson had an office in New York City, you, Mr. Butler, Mr. Wilson?

"A I don't remember that specifically. I remember that we had a meeting there in I mean the first one was in in Carolina, Mr. Wilson's office.

"Q Do you remember whether you had an inquiry from Mr. Robert Schmitz in the middle of that conference as to whether he should attend and you had made a decision not to?

"A I do not remember that, no.

"Q You don't remember a note coming in from Mr. Wilson's secretary?

"A I don't. We had a number of meetings, many of them directed toward getting the facts in our possession because as I think would be readily recognized, this case which had been pending in various courts in this country and the International Court for 15 years at that time, wasn't it, John, was just packed with factual background which you had to be aware of before you could effectively rebuttal anybody.

"Q You remember that I provided you with a great deal of documentation, too?

"A I remember that you sent us a lot of it, I guess the documentation, the pleadings --

"Q Different printed things I had?

"A Printed things. The problem was that there is nowhere a summary of where we then stood and that's a problem which I addressed myself to and which I drew from the documents you provided me and from interviews with various people and from a lot of secondary material, published sources, going back to a lot of Department of Justice trips to Switzerland and the way the whole thing began right at the end of the war.

"Q You remember that when you prepared this document that was ultimately submitted to the Department, that you submitted --

"A I am not clear that it was ultimately submitted.

"Q But we are talking about the same document?

"A Yes.

"Q You were kind enough to let me look at it and let me make some suggestions.

"A I did, yes, and you made some useful suggestions.

"Q Now, did you deal in the Department, after the withdrawal of Mr. Townsend, with anybody but Mr. Orrick?

"A There was a Mr. Oehmann, I believe, who was in

What are the *best* ways to make a difference?

"Q Was Mr. Derrick then the only other individual in the Department of Justice with whom you dealt, after Mr. Townsend had left?

"A I believe so.

"Q And did you get down to discussing items of settlement with Mr. Orrick?

"A What do you mean by 'items of settlement,' John?

"Q Well, for example, what were you going to do with the tax claim; were you going to concede it or were you going to fight it?

1654

"A We did not get to the tax claim, I don't believe, and we got down to the major elements that had to be disposed of and also certain pre-conditions for even getting that far, which were first some outside appraisal of values, and I gave him the request that Mr. Wilson mentioned, that an outside expert opinion be obtained on questions of value.

"Q Was that ever procured?

"A I got a word informally around about -- not directly from Orrick, but I was given to understand that it would be procured and I so told Mr. Wilson and he got a letter turning it down just the day before he was going down to a meeting on it.

"MR. C. E. WILSON: That is right.

"A (continuing) And I remember the value -- the value was never made.

"Q Was this turned down before you were aware of any activities by Dr. Schaefer to interpose himself directly into the affair?

"A I believe it was.

"Q Had you formed a judgment as to what you were going to have to pay for the return of the Interhandel shares which were held by the Attorney General?

"A No.

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"Q Did you discuss with Mr. Orrick the possibility of the intervenors making a deal with the Government and the fact that they were in the room?"

"A Yes, I did. At that time, I didn't know what was going on with the intervenors and the fact that they were making a deal with the Government, but I did know of the fact that they were in the room."

"Q And you were in contact with the counsel for any one of the three intervening groups?"

"A I did not."

"Q For example, Mr. Moskowitz?"

"A They tried to get in touch with me at one point but I didn't want to get involved with them until I knew just who they were and what they were up to and what validity it had."

"Q Did you apprehend from your newer knowledge of the intervenors that this was a problem you had to deal with in the compromise?"

"A I knew that they had to be handled and I am sure that Orrick and I discussed that."

"Q But you did not --"

"A But I think he knew as little about it as I did."

"Q But you did not contact any of the intervening groups --"

1656

"A I did not.

"Q (continuing). -- to get their reaction to a settlement?

"A I did not.

"Q And were you discussing with him a full demand for return or were you on a percentage basis discussion with Mr. Orrick?

"A I think that Orrick and I, by fairly early in the game, agreed that it was just what's in the cards to have either the extreme positions adopted by the other, because there were two governments involved, they were taking positions, and whether we thought they were justified or not, they were facts we had to deal with. And the U. S. Government doesn't reverse itself very easily and I guess the Swiss don't either.

"And I, therefore, thought the restitution theory just wouldn't work and Orrick, I think, and I agreed on that.

"Q You mean by that returning the shares to Interhandel?

"A Yes.

"Q Yes. And how much further did you go; how did you get into the subject of money, if you were not going to have return of the shares, how far did you advance with Orrick in discussing dollars or percentages?

1652

"A As soon as I could get in his door, yes.

"Q And this was --

"A I think my first contact was with Mr. Oehmann, because that was before Orrick's appointment and Oehmann said, 'Look, I am just holding this baby for the time being, we are going to put it in the Civil Division and we are going to wash out this special division that Dallas Townsend had created for himself or for everybody,' and I said, 'Well, I want somebody to talk with because I represent Mr. Wilson, who is fully authorized to talk, and I believe there's a basis for a resolution of this hoary problem here.'

"Q How many conferences, approximately, in round figures, did you have with Orrick?

"A Oh, I would think six or eight.

"Q To your knowledge, did you learn whether Mr. Wilson, independently of you, had conferences with Orrick?

"A I know -- I don't know for certain. I don't think he did.

"Q Did Mr. Wilson ever accompany you in the conferences with Orrick?

"A He did not.

"Q Did Mr. Pryor accompany you on any of those conferences?

"A I believe he did, but I can't be certain of that.

"Q. And then --

"A. Yes, I think that's correct. It is to come to the end of the conference. I was talking to people -- and I think --

"Q. Did you say anything about the fact that with the exception of the fact that you were in error?

"A. Yes, I think so.

"Q. And then --

"A. In talking to the I suppose I said it was, too.

"Q. Was the termination of that three months -- I mean, only through -- was the termination of those three months fairly coincident with the activities of Schofer that you have referred to?

"A. Probably because I was going -- I went abroad on a holiday that summer and I think it was vacation time and I think Orrick went off on vacation and he agreed to suspend until we got back. And when I was on vacation, I learned -- no, he told me in the last conference I had before I went abroad that there had been somebody who represented himself as authorized, and what did I know about it.

"I said, 'I know nothing about it.' And so when I got to wherever I was going in the south of France, I think I called Dr. Schofer in Zurich and said, 'There's been a peculiar development. I'd like to come up and

1660 discuss it with you.' And then he told me the whole story.

"Q Now, let me summarize something and see if you agree with me.

"You have testified here, in answer to Mr. O'Donoghue's questions, that you are confident that you would have worked out a settlement and that you were working toward --

"A I didn't say -- I don't know that I used the word 'confident.' You can't be confident until the thing is signed, but I said that I thought we were in a very good position to go ahead on a settlement along the right lines and I was confident that it could be settled, whether by me or somebody else; it could be settled by the end of the calendar year.

"Q And you said that you were working toward a better settlement than we got in your testimony. Do you remember saying those words?

"A No, I don't remember comparing, because I had nothing to compare your settlement with. I don't remember what it was in the first place and I don't, as I have just shown you, I was not comparing this with a very definitive --

"Q Let me expand this. And, Mr. Spofford, it isn't pleasant cross-examining a brother lawyer and I want to bring this --

"A What do you want to say, John? Tell me that.

1662

"Q Now, having not discussed or having no recollection today of a discussion of any of these components or not being able to give the range of figures, how are you capable of saying today, except from a lawyer's hunch, that you could have gotten a better settlement than I got?

"A I didn't say that I could have gotten a better settlement. I thought I said we were in a fair way of moving toward a settlement. I was confident that Orrick and I could get together in the long run.

"Q Is there any event that transpired between you and Orrick to encourage you, beyond the testimony which you have given in answer to all of our questions today?

"A I can't -- no, no event, no single event. It was just the tenor of our conversations was to me very encouraging.

"Q Now, with regard to this so-called Prince Radziwill, are you -- was it your information that he was a representative, physically going to the Department of Justice?

"A I just don't know what he did.

"Q What were the words that Mr. Orrick used to you to impart this knowledge?

"A I said he said something like this, that there was somebody else in the field here and which may complicate

1007 the situation, and I think that is -- well, I can ask
 all these questions. I don't know anything
 about this. At the time, I was a complete stranger to
 Mr. Schick. I don't know who he was and talk to
 Mr. Schick.

1008 Q. Now, you said that you were "introduced" before you
 saw Mr. Schick. What was the introduction, "introduction,"
 or "introduction" or "introduction," "introduction"?

1009 A. Or "introduction."

1010 Q. Did you?

1011 A. I don't think so. But I forgot that -- I
 forgot the introduction or then I said that phrase from my
 talk with Mr. Schick and in Berlin, then I went to
 see him."

MR. WOOD: That completes the deposition.

1664- MR. WILSON: We would now like to read the
1665 deposition of Mr. Samuel Pryor taken last week by the
Defendant.

MR. WILSON: Mr. Strickler, you were the
questioner, were you? This deposition was taken in New
York on the 28th of January 1970, Mr. Strickler appearing
for the Defendant and Mr. O'Donoghue appearing for the
Plaintiff.

"SAMUEL F. PRYOR, III."

"BY MR. STRICKLER:

"Q Will you state your name and tell us where you live?

"A My name is Samuel F. Pryor. I live in Bedford
Hills, New York.

"Q Where do you work, Mr. Pryor?

"A I am a partner of Davis, Polk & Wardwell, in
New York City.

"Q And are you acquainted with Robert A. Schmitz?

"A Yes, I am.

"Q And you worked during the period from 1960
through perhaps early 1962 in part in connection with the
Charles Wilson trusteeship?

"A Yes, I did.

"Q Did you attend any meetings in Washington in
connection with the services you rendered?

"A Yes, I attended one meeting in Washington.

1636

"Q Will you tell us, now, how you performed your services.

"A I will answer that question, Mr. Charles Wilson.

"Q What was the first thing that you did after you came to the office?

"A I went to the office and I saw Mr. Townsend. I told him that I had come to the office on the 1st of 1910.

"Q You told a number of Mr. Townsend what was the name of the case and that there were present as well as Mr. Charles Wilson and Mr. John Wilson?

"A Yes, that was the meeting at the Department of Justice in the morning.

"Q Will you tell us in substance, what occurred at the meeting or you can now recall it, Mr. Pryor?

"A I can only recollect a portion of the meeting, or what now seems to be a portion of the meeting, and that was a review of the trustee's legal position, and I believe the submission of the trustee's authority.

"Of course, a discussion of the Green Committee's position, a discussion as to how we were coordinating with Mr. John Wilson and we advised Mr. Townsend that we were preparing an offer for settlement.

"Q Was there any discussion at that meeting of a settlement offer by either group in attendance?

1667

"A I do not recollect any specific proposals by either side at that meeting.

"Q Can you tell us the extent of your participation in this matter over its life, so long as the trusteeship was in existence?

"A My role was the senior associate in this firm with responsibility for assisting Mr. Spofford, the partner in charge, primarily in the area of research of the history of the case and preparation of various alternative proposals for consideration of Mr. Spofford and the trustee.

Also in part, I acted as liaison with Mr. John Wilson to whom I was instructed to keep fully informed.

"Q During this participation, did you have occasion to talk both with Mr. Spofford and Mr. Charles Wilson on many occasions?

"A I met and spoke with Mr. Charles Wilson together with Mr. Spofford on many occasions.

"Q During the course of your participation, did you ever hear a settlement figure of 75 percent for Interhandel and 25 percent for the government mentioned by either Mr. Wilson or Mr. Spofford?

"A Yes. This was a figure that was used often by Mr. Charles Wilson.

1961

"Q. Did you ever see a picture like that

in any of the papers or in any of the books?

"A. No.

"Q. Did you ever see a picture like that in any of the

papers or in any of the books?

"A. No, I did not.

"Q. Now, Mr. Wilson, in dealing questions

relating to the 25 percent question?

"A. Yes, Mr. Wilson, for example, in the 25 percent question, Mr. Wilson, could you tell me of time the 25-10 settlement?

"A. Yes.

"Q. Can you tell us something more about the circumstances under which that was mentioned?

"A. As Mr. Scofield has mentioned, it was our opinion that it was not fruitful to pursue a line of thinking which would involve complete restitution.

"It was Mr. Charles Wilson's view that the government would accept 25 percent, or at least this was the area in which we should start our negotiations.

"Q. Do you remember when that was first mentioned by him?

"A. I am sorry, I do not.

"Q. Was there any mention of it about the time of

1669 "the meeting on December 2, 1960?

"A Very definitely. We discussed that figure sometime before that meeting.

"Q Did he indicate to you, did he say to you that Mr. Townsend had suggested that he would find such an offer acceptable?

"A No, I do not believe that Mr. Wilson told me that.

"MR. O'DONOGHUE: Will you mark these three documents Plaintiff's 180, 181 and 182 for identification.

"(Document headed, 'Memorandum for Mr. Spofford, November 29, 1960,' marked Plaintiff's Exhibit 180 for identification, as of this date.)

"(Document headed, 'Memorandum for Mr. Spofford, December 7, 1960,' marked Plaintiff's Exhibit 181 for identification, as of this date.)

"(Document headed, 'Memorandum for Mr. Spofford, December 8, 1960,' marked as Plaintiff's Exhibit 182 for identification, as of this date.)

"BY MR. O'DONOGHUE:

"Q Mr. Pryor, I show you what has been marked as Plaintiff's for identification, numbers 180, 181 and 182, and ask if you can identify them, and if so, tell us what they are?

7-79

"A. I am not sure of the exact date of the meeting, but it was in the latter part of the year, 1934, or the beginning of 1935.

"Q. Did you know Mr. Wilson?

"A. Yes, I knew Mr. Wilson.

"Q. (To the witness) Now, the suggestion that was made to you, I am assuming, was made with respect to the proposed amendment to the constitution of the

"A. In the latter part of 1934, or the beginning of 1935, I received a letter from Mr. Wilson, suggesting that I should submit a proposal to the Department of Justice.

"Q. Yes, I am assuming that was the meeting.

"A. What was the nature of the proposal?

"A. Some weeks before the meeting we decided that it was time to submit some of the suggestions which we had ourselves, some of the concepts we had been thinking about, so we would begin to be in a position to discuss them with the Department of Justice.

"Q. Was there any suggestion from Mr. Spofford or Mr. Wilson that the Department of Justice had invited a proposal by the trustee?

"MR. STRICKLER: My continuing objection is still applicable.

"Q. Did Mr. Wilson suggest that the Department of Justice had invited him as trustee to submit a proposal?

"A. Yes. I certainly was under the impression he

1671 "had been invited to submit a proposal and that was our function, to work with him and prepare the proposal.

"Q I believe in each of these exhibits, or at least in two of them, the initials A.T. are used. What does that mean?

"A That refers to the Attorney General.

"MR. O'DONOGHUE: I have nothing further.

"EXAMINATION (cont'd.) BY MR. STRICKLER:

"Q Mr. Pryor, looking at your memorandum of November 29, 1960, Plaintiff's Exhibit 180, I notice that you set forth various components of what had to be considered in order to reach a settlement. One of them, paragraph D, page 3, mentions a tax counter-claim which is recognized as having no substance.

"Was that the \$17 million tax counter-claim that was in issue at that point in time?

"A I believe it was.

"MR. STRICKLER: I have no further questions.

"MR. O'DONOGHUE: I will offer these in evidence.

* * *

1677 MR. O'DONOGHUE: I offered them in evidence at that time, and there was an objection, so I suppose your Honor will have to rule on them.

MR. STRICKLER: We will not renew the objection at this time, your Honor. We have no objection at this

1679

DEPOSITION OF DR. HUGO A. FREY:

"Q1 Please state your name and residence address:

Dr. Hugo A. Frey, Zunikerstrasse 22,
Itschnach 8700, Kusnacht. Office: Talstrasse 11,
8001 Zurich.

"2 Are you a Swiss native citizen?

Yes.

"3 What is your profession?

Lawyer.

"4 What is the name and address of your firm?

Niederer Kraft & Frey, Talstrasse 11, 8001
Zurich.

"5 Are you acquainted with the plaintiff, Mr.
Robert A. Schmitz?

Yes.

"6 Have you met him both in New York and in
Switzerland?

Yes.

"7 If in New York, will you please give the
approximate dates and name those who were present on each
occasion, if more than one occasion:

I have met Mr. Schmitz in New York during
the time from January 24 to 31, 1959 at several
occasions in the Hotel Tuscany, 39th Street, as well

1681 "phone conversation with the office of Dr. Schaefer who, if I am not mistaken, at the time of my phone calls, was absent.

"10 If your answer is in the affirmative, please state the approximate time, and the substance of the conversation which ensued in your presence.

"My phone calls to Director Saager and to the office of Dr. Schaefer took place on October 22 and 23, 1959. If I am not mistaken, I gave to Director Saager a short survey of my contacts with Mr. Schmitz and I asked Director Saager to receive Mr. Schmitz. I informed Mr. Schmitz, who then was in Switzerland, by phone on my conversations with Director Saager and told him to take up direct contact with him or possibly with Dr. Schaefer.

"11 Have you met with Mr. Robert A. Schmitz other than in New York and Switzerland?

"As far as I know, I never met Mr. Schmitz outside New York and Zurich.

"12 Was the same subject matter discussed on each occasion when you met with Mr. Robert Schmitz?

"Yes.

"13 What was the subject matter?

"The divesting of General Aniline and Film Company.

[illegible][illegible]

"Dr. [redacted] of the [redacted].

"17. Were you ever a lawyer for, or any other kind of representative or emissary of, the Swiss corporation which is called 'Informantel' and which is the defendant in this action?

110

"18 Did you ever represent to Mr. Robert A. Schmitz that you were speaking and acting for Interhandel or its Board of Directors, or that you were acting as emissary for either?

1683 "No. I had explicitly stated that I was acting on behalf of Dr. Sturzenegger only.

"19 In what capacity did you represent yourself to be in your contacts with Mr. Robert A. Schmitz?

"See answer to question No. 18.

"20 Did you ever promise Mr. Robert A. Schmitz, on behalf of Interhandel or anyone else, a fee or other compensation?

"No.

"21 If so, please give the details of discussion and the time and place, and state who else was present:

"---

"22 Did you ever assure Mr. Robert A. Schmitz that he would receive a fee or other compensation from Interhandel out of the recovery of its action against the United States Government or the U.S. Attorney General, or from any other source?

"No. I even warned Mr. Schmitz of the fact that he was neither acting for Interhandel nor for Dr. Sturzenegger and that he was not covered by an agreement of any kind from the Swiss side concerning his fee.

"23 Have you or your law firm had correspondence with Mr. Robert A. Schmitz, in any way relating to the

"I returned to the United States in 1946 and the
 following year."

"Q."

"A. I am a Swiss citizen and, therefore, not
 subject to the jurisdiction of the United States. I
 was not in the United States at the time of the
 deposition of Dr. Sturzenegger."

"I shall be sworn that I shall be
 sworn to the truth."

"W. WILSON: I desire no objection on
 this deposition, if the Court please. That concludes
 that deposition."

1683 "W. WILSON: Now, you're offering the next
 deposition of Dr. Sturzenegger?"

1690 "Q State your name and residence.

"A Sturzenegger, Hans, Maltense; 67, Binningen,
 near Basel.

"Q What is your business or profession?

"A I am a banker and fully liable partner in the
 firm H. Sturzenegger & Cie., private bank, Basel.

"Q State where you engage in such business?

"A At the business address St. Jakobsstrasse 46,
 Basel.

"Q Give the approximate beginning and ending

dates of your service as a Director of Societe Internationale, etc., sometimes called I. G. Chemie and (hereinafter 'Interhandel'), and state whether, during that period, you had the right alone to bind Interhandel orally or in writing.

1691

"A In June 1940 I was elected a member of the Board of Directors of the Internationale Industrie und Handelsbeteiligungen AG., formerly 'I. G. Chemie' and later called 'Interhandel', and I resigned my post in the early part of 1958. During this period of time I was not entitled to bind Interhandel on my own, either in oral or written form.

"5 Did plaintiff, Robert A. Schmitz ever ask you, or to your knowledge, anyone connected with Interhandel, for a fee from Interhandel for bringing about the so-called Charles E. Wilson trusteeship equal to five percent of the proceeds to defendant of such settlement as the trustee might be able to obtain from the United States Government?

"A As far as I remember, the plaintiff Robert A. Schmitz has never asked me, nor to my knowledge anyone else connected with Interhandel, for a fee from Interhandel for procuring the so-called Charles E. Wilson trusteeship in the amount of 5% of the proceeds from a settlement which the trustee might receive from the Government of

10



"9 Did you ever reach an understanding with Mr. Robert A. Schmitz about a compensation for him for bringing about the so-called Charles Wilson trusteeship, either on behalf of Interhandel, its board of directors or management, or on behalf of the shareholders of Interhandel, or on your own or anyone else's behalf?

"A No.

1693

"10 Did you ever correspond with Mr. Robert A. Schmitz, or with anyone else, about a compensation or remuneration for him?

"A Not to my knowledge.

"11 If your answer is in the affirmative, will you please produce and identify from your files the originals of communications received by you and carbon copies of communications sent by you, in which remuneration or compensation is referred to, or request is made therefor, or discussion thereabout occurs? (In this connection, you are advised that Mr. Robert A. Schmitz has turned over to the defendant copies of all the documents that you sent him with your letter of November 7, 1968, as well as the four lists in which you describe such documents.)

"A My answer does not confirm this.

"12 Did you ever orally make or write any statement recognizing or to the effect of recognizing, as valid

... of the by
... ..

... ..

... .. of it.

1691

... ..

... .. with
... .. of that
... .. received by the
... .. In other words,
... .. to Mr.
all of the was kind
enough to let us have copies of this correspondence, so
we are aware of what each other has on this.

1695

THE COURT: I will receive them in evidence.

1701

THE DEPUTY CLERK: Defendant's Exhibits Numbers 30
through 95 and ... 54, 55 received into evidence.

1702

THE DEPUTY CLERK: Defendant's Exhibit 96
received into evidence.

MR. WILSON: This is the deposition of Bruno Max Sasser,
taken in Washington on January 7, 1970, as a witness for the
Defendant, at which Mr. Strickler represented for the
Defendant, and I assume Mr. O'Donoghue for the Plaintiff.

MR. ... : This deposition is being taken

by agreement of counsel of the witness, Bruno Max Saager.

"DIRECT EXAMINATION

"BY MR. STRICKLER:

"Q You have been sworn, haven't you, Mr. Saager?

"A Yes.

"Q All right. Will you state your name, please, and tell us where you live?

"A Bruno Max Saager, born 13th of September, 1908
Lupperswil, Canton of Aargau, Switzerland.

"Q Where are you employed, Mr. Saager?

"A I am living in Kuznacht, near Zurich.

"Q Now, Mr. Saager, where are you employed?

"A I am employed with Union Bank of Switzerland.

"Q How long have you been employed with the Union
Bank of Switzerland?

1703

"A Since 1930.

"Q What is your position with Union Bank now, sir?

"A General manager.

"Q Directing your attention to the period late
1959 through June of 1962, what was your position?

"A In '59 I was deputy general manager. In
'60 I became general manager.

"Q Did you have any other positions with the
bank with respect to its committees or any of its other
functions, sir?

"A Yes.

"Q What is the name of the firm, the name of the firm of which you are a member?

"A The name of the firm is the London Stock Exchange.

"Q Do you have any other position in the stock exchange?

"A Yes, I am a member of the firm.

"Q And in connection of your position in the bank, do you have any other position in the stock exchange department of the bank or the investment department?

"A Yes.

"Q What position do you have in connection with those departments?

"A I am head of the stock exchange department.

1728

"Q And do I understand that you have worked with Union Bank from 1922 until the present without interruption?

"A Oh, I had once an eight months' leave for working on the London Stock Exchange. It was in 1934-35.

"Q Are you acquainted with the plaintiff in this case, Robert A. Schnitz?

"A Yes.

"Q And when did you first meet Mr. Schnitz?

"A End of October. I think it was '33.

"Q Are you uncertain as to whether it is '58 or '59?

"A Wait a minute. Mr. Schmitz stated when it was exactly.

"Q Let me withdraw that question for the moment, and let me ask you this question.

Do you remember when the Union Bank came into active participation in the affairs of Interhandel?

"A End of 1957, beginning of 1958.

"Q And by reference to that date, does that help you recall when you first met Mr. Schmitz?

"A Yes, it was 1959.

"Q It was in October 1959 that you first met Mr. Schmitz?

"A Yes.

1705

"Q Can you tell us where you met him and the circumstances of your meeting?

"A Mr. Frey phoned me and told me he wanted to introduce Mr. Schmitz with me, that he knows a lot about Interhandel, and it could be of some interest to me to know what he can say.

"Q As a result of that conversation, you did have a meeting with Mr. Schmitz?

"A I told him to send Mr. Schmitz to my office.

"Q Did Mr. Schmitz come to your office?

"A Jurisprudence.

* * *

"Q During your discussion with Mr. Schmitz at this meeting in October 1959, was the subject of compensation discussed?

1707

"A No.

"Q Did Mr. Schmitz ever mention to you that he was expecting to get some percentage of any recovery for his services at this meeting in October of 1959?

"A In this meeting, he did not mention any claim for his services.

"Q Were you present when Mr. Schmitz met Dr. Schaefer on this occasion?

"A No.

"Q Did you have discussions with Dr. Schaefer concerning this meeting?

"A Of course, he had seen us practically every day once for a shorter or longer while, and all that was of some interest for him or for me we discussed or mentioned.

"Q Did you ever have any discussions with Dr. Schaefer as to whether or not the subject of compensation for Mr. Schmitz was brought up during this meeting?

"MR. O'DONOGHUE: I object to that question."

- - - - -

18
Q Now, I am asking you a question. Do you want to
answer it?

A Yes, I do. I am not going to answer it. I
am not going to answer it. I am not going to answer it.
I am not going to answer it. I am not going to answer it.
I am not going to answer it. I am not going to answer it.
I am not going to answer it. I am not going to answer it.

Q Now, I am asking you a question. Do you want to
answer it? If you do not want to answer it, I will not
ask you any more questions. If you do not want to answer it,
I will not ask you any more questions.

A Yes, I do. I do not want to answer it. I will not
answer it.

69
(Continuation of reading of deposition)

Q Now, I am asking you a question.

Q You may answer the question, Mr. Schmitz.

A He did not mention that Mr. Schmitz claimed
something, or not. He did not mention--

Q When you say "he," are you referring to
Mr. Schmitz?

A No, Mr. Schaefer. He did not discuss it.

Q I want to be very clear on this. You had
discussions with Mr. Schaefer concerning Mr. Schmitz?

A Yes.

1711

"BY MR. STRICKLER:

"Q Did you have subsequent meetings with Mr. Schmitz?

* * *

1712

"THE WITNESS: Of course, Mr. Schmitz was several times in Zurich, and he paid me short visits, "yes, sometimes even a bit longer; and we had discussions; but I cannot remember exactly it was days there or days there.

"BY MR. STRICKLER:

"Q It was what?

"A I cannot exactly say which days it was.

"Q You can't say the exact dates?

"A No. But Mr. Schmitz was several times with me in Zurich, sometimes just to say "hello," because he was mostly with Dr. Ulrich Wehrli and Mr. Schaefer.

* * *

1713

"BY MR. STRICKLER:

"Q To your knowledge, was Mr. Schmitz then paid monthly the amount of two thousand dollars for some period of time, sir?

"A Yes.

"Q Do you know for what period of time the two thousand dollar payments were made?

"A Yes, I believe we had discussions about this \$112,000 payment, but not about the draft, just about the payment, \$112,000.

"BY MR. O'DONOGHUE:

"Q Who had discussions?

"A Wehrli and I.

"BY MR. STRICKLER:

"Q Now, at any time during your association with Robert Schmitz, in any meetings that you had with him, was the subject of compensation at the rate of five percent for a finder's fee ever discussed?

"A Never.

1715

"Q Can you tell us when you first learned of his claim for a five percent finder's fee?

"A Yes, exactly when I came back from South Africa at the end of January 1962; on my desk was a copy of a letter from the 17th of January, '62, and this was a shock for me.

"Q Why was it a shock for you?

* * *

"THE WITNESS: Because I didn't never know about a finder's fee which was mentioned in this letter..

* * *

1. The first group of people who are likely to be affected by the proposed changes are those who are currently employed in the public sector. This group includes a wide range of individuals, from those in the health service to those in the education sector. It is important to consider the impact of these changes on all of these groups, as they will all be affected in some way.

1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 26

[illegible]

Dr. Wilson: No new mutation:

11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 841. 842. 843. 844. 845. 846. 847

"Q Will you, in discussion, with any agent or officer of International or Union, learn even learn of or ever learn of an agreement on the part of International to pay a five percent commission to Mr. Schaffitz?

"No."

Mr. GIBSON: I objected to that and still do.

MR. WILSON: I submit he has a right to hear it.

THE COURT: I will overrule the objection.

"BY MR. STRICKLER:

"Q Were you ever present at any time when Mr. Robert A. Schmitz reported that the United States was willing to settle the Interhandel matter on a basis which would give Interhandel seventy-five percent and the Government twenty-five percent provided that the twenty-five percent was equal to \$40 million?

"A No.

"BY MR. O'DONOGHUE:

"Q You were not present?

"A No.

"BY MR. STRICKLER:

"Q Did you learn from any of your associates that such statements had been made by Mr. Schmitz?

"A No.

"MR. O'DONOGHUE: I object to that question, and I move that the answer be stricken.

* * *

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THE COURT: Same ruling.

MR. WILSON: That completed your examination at that point, did it not, Mr. Strickler?

MR. STRICKLER: Yes, sir.

THE COURT: Did you have cross-examination? That's the deposition taken here in the courtroom?

"Q. Now, I am going to ask you a question: I would like to know if you ever went beyond the limits of the [Name] to that extent, I mean, to the extent of [Name] a hostile witness in the [Name] of the defense.

"A. [Name]

"Q. [Name]

"Q. Now, I am going to ask you the one that interested Union Pacific in connection to Interhandel stock?

"A. Yes.

"Q. And when did you urge that to be done?

"A. End of '57, beginning of '58 when Dr. Sturzenegger cancelled his preferred shares.

"Q. Who owned the stock of Interhandel at that time that you speak of, of Dr. Sturzenegger cancelling his preferred shares?

"A. The preferred shares were owned, to my knowledge, by the bank Sturzenegger.

"Q. And did Dr. Sturzenegger own the bank Sturzenegger?

"A. I think so, yes.

"Q. And did that control the Interhandel, did it have voting control of the corporation?

"A Yes.

"Q And what was the effect of cancelling the preferred shares?

"A At this moment, the so-called common shares, about one hundred five to one hundred ten thousand shares outstanding, were owned and controlled of the company, Interhandel.

"Q You say the outstanding shares were then owned by Interhandel? I don't understand that. After the cancellation of the preferred shares, who owned the shares in the corporation that controlled the corporation?

"A Very broad public in Switzerland owned one hundred five to one hundred ten thousand shares. Certain shares were in the portfolio of General Aniline & Wilm Corporation, but they were blocked and vested."

* * *

"BY MR. O'DONOGHUE:

"Q These one hundred five or one hundred ten thousand shares, were they widely held by---

"A Very widely, yes.

"Q And did any one person have the control?

"A No.

"Q Did Dr. Sturzenegger still have a substantial number of shares?

"Q. Now, when you say that he is a man, who was
born in 1912, and who is now 30 years old.

"A. Yes, that is correct. He is now 30 years old.

"Q. Now, when you say that he is a man, who was

"A. Yes, that is correct. He is now 30 years old.

"Q. Now, when you say that he is a man, who was

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"A. Yes, that is correct. He is now 30 years old.

"Q. Now, when you say that he is a man, who was

"A. Yes, that is correct. He is now 30 years old.

"Q. Now, when you say that he is a man, who was

"Q. Yes.

"A. He had the absolute voting control of
Interchange, yes.

"Q. Do you know why he cancelled the preferred
shares?

* * *

(Continuation of reading deposition:

"A. No.

"BY MR. O'DONOGHUE:

"Q. The effect of it was that from having absolute

control of the company he had only an eleven percent interest. What benefit was it to him in cancelling the preferred shares?

* * *

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"THE WITNESS: I cannot tell you what was the real reason. You have to ask Sturzenegger, but this question to Sturzenegger, because I cannot give you an answer. I never discussed this case with Sturzenegger.

* * *

"BY MR. O'DONOGHUE:

"Q Now, what was the date of this cancellation of the preferred shares?

"A Oh, late '57. I cannot give you the exact date.

"Q Now, after this cancellation, did anyone own a larger percentage of the shares immediately upon the cancellation of the preferred shares? Who was the largest stockholder of the then outstanding shares, the common stock or A shares or whatever they were called?

"A I cannot tell you.

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"Q You cannot tell?

"A No.

"Q Would it have been Dr. Sturzenegger, as far as you know?

"Q. Now, did he sell them all of his shares of

"A. I don't know. I don't know if he sold them or not.

"Q. Now, did he sell them all of his shares of

"A. I don't know. I don't know if he sold them or not.

"Q. Now, did he sell them all of his shares of

"A. I don't know. I don't know if he sold them or not.

"Q. Now, did he sell them all of his shares of

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"Q. Now, did he sell them all of his shares of

"A. I don't know. I don't know if he sold them or not.

"Q. Now, did he sell them all of his shares of

"A. I don't know. I don't know if he sold them or not.

"Q.

"A. I can't give you the exact number. It was perhaps a bit more than ten thousand, it may have been just ten thousand; but in any case, he sold what he had through Dr. Frey. It was not Sturgeson; it was Dr. Frey who conducted the sale.

"Q. And did he sell them all of his shares of outstanding stock in Interhandel? Did Dr. Sturgeson sell it all, as far as you know?

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"A. I can't tell you.

"Q. Well, you said---

"A. I do not know.

"Q. I see. You said he had about ten or twelve

thousand shares.

"A Yes, and he sold ten thousand, and afterwards, it may have been what he had already sold before.

"Q Well, now, he may have had as many as two thousand shares left, is that what you said?

"A It may also be, yes.

"Q When did Union Bank acquire the controlling shares of Interhandel?

"A We had never control.

"Q You never had control?

"A No.

"Q What was the largest number of shares you owned for the bank itself?

"MR. STRICKLER: What period of time?

"MR. O'DONOGHUE: At any time.

"THE WITNESS: I would like to know at which period, because this is a very difficult question to answer you.

"BY MR. O'DONOGHUE:

"Q Well, let us start in 1958.

"A Yes.

"Q During 1958, how many shares of stock did Union Bank acquire?

"A '58, twelve to fifteen hundred.

"Q Only twelve to fifteen hundred?

"A. Yes.

"Q. Did you ever see any of the other members of the

club in 1933?

"A. Yes, I saw them in 1933. I saw them in

1933. I saw them in 1933.

"Q. Did you ever see any of the other members of the

club in 1933? Did you ever see any of the other

"A. Yes.

"Q. Now, I am going to ask you, if you can, if you
you ever saw any of the other members of the club,
now, did you ever see any of the other members of the club?

"A. Yes.

"Q. And in 1933 did you acquire shares?

"A. Oh, we acquired -- I was bank, and also brokers,
and we are represented as the stock exchange in Switzerland
as dealers. So, sometimes my dealers came back with two
hundred, three hundred; sometimes we had sold it. So it
is very difficult. I could say end of '33 we had perhaps
two thousand, two thousand three hundred, but still not a
substantial amount.

"Q. Did officers of the bank own substantial

"numbers of shares in Interhandel?

"A. No.

"Q. Did they own any shares?

"A. Of course, Schaefer and myself, we had each

one ten shares, which were shares which we had obliged to---

"Q Qualifying shares, I suppose you would call them?

"A Yes.

"Q Now, what price was the stock of Interhandel bringing in 1958?

* * *

"THE WITNESS: This answer I can't give you. You can look in the records of the stock exchange.

"BY MR. O'DONOGHUE:

"Q You don't have any rough notion of the range of the values in that period?

"A When we bought Sturzenegger shares it was a price around 3,600 francs.

"Q 3,600 francs?

"A Yes.

"Q In the period of negotiation to have Mr. Charles Wilson act as trustee for Interhandel, you are familiar with some of those dealings?

"A Yes.

"Q You know that he undertook to become trustee to represent Interhandel in its dealings?

"A Yes.

"Q Was there any real control of the stock of Interhandel by any particular bank or group of banks at

the first.

"A. Yes, sir.

"Q. Now, I am going to ask you to read the letter which was written to you by Dr. Schaefer, dated December 1, 1941, and which is marked 'Exhibit A' in the book which you have just shown me. Is that correct?

"A. Yes, sir. That is correct. When we said a deal was made, that is what I meant.

"Q. Now, I am going to ask you to read the letter which was written to you by Dr. Schaefer, dated December 1, 1941, and which is marked 'Exhibit A' in the book which you have just shown me. Is that correct?

"A. Yes, sir. That is correct.

"Q. Now, I am going to ask you to read the letter which was written to you by Dr. Schaefer, dated December 1, 1941, and which is marked 'Exhibit A' in the book which you have just shown me. Is that correct?

"A. And I think I would like to, Wiedeman--

"Q. Dr. Schaefer?

"A. Yes; I believe I have this document.

"Q. Now, when was this deal made? Do you know the exact date?

"A. No. But if it is important, I can look in the books in Zurich and give it to you.

"Q. Well, the reason I am asking about it is that prior to Union Bank, prior to Dr. Schaefer's becoming interested in having Mr. Charles Wilson appointed trustee to represent Interhandel in its dealings with the United States Government, Dr. Stummegger, through Mr. Troy, in the first half of

1959, was making efforts to obtain the services of Mr. Wilson to represent---

* * *

"BY MR. O'DONOGHUE:

"Q --to have Mr. Charles Wilson act as trustee for

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"Interhandel. Now, did Dr. Sturzenegger and Mr. Frey have any interest at that time in Interhandel that would have justified that concern?

"A I did not know that there was any discussion of a trusteeship with Mr. Charles Wilson earlier when Mr. Schmitz mentioned it, its possibility to us. Now I understand your question, why you would like to know exactly the date for it.

"Q You don't need to understand why.

"A I cannot give it, because I have to look in our files. It is just in my memory it must have been some time in spring of '59.

"Q I see. Here is a letter which has been introduced in evidence as Plaintiff's No. 21 from Dr. Hugo Frey to Mr. Charles Wilson, dated June 4, 1959, in which he says -- I won't read the whole thing, but I will let you look at the whole thing:

'In view of the circumstances and other

the board of Interhandel.

"Q And you made an appointment for Mr. Schmitz?

"A So it was.

"Q But you didn't attend the meeting?

"A No.

"Q Did you see Mr. Schmitz any more in that visit

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"of October 1959 to Zurich?

"A I think so, yes.

"Q And did you see him alone?

"A I think so, yes.

"Q And you never met in a conference with him and Dr. Schaefer, is that correct, at that time?

"A Not in a conference, no.

"Q Well, what did you do, meet casually or socially or what?

"A Casually.

"BY MR. STRICKLER:

"Q That is the three of you?

"A Yes, it may have happened that we met by accident all three in the bank, not in a conference.

"BY MR. O'DONOGHUE:

"Q And did you say that he met with Dr. Ulrich Wehrli at that time?

"A Of course, yes.

"Q Did he meet with anybody else in the bank at

Q. Now, what

A. I don't know. I don't know. I don't know.

Q. Now, what

A. I don't know. I don't know. I don't know.

Q. Now, what

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A. I don't know. I don't know. I don't know.

Q. Now, what

A. I don't know. I don't know. I don't know.

Q. Now, what

A. I don't know.

Q. Now, what letter did you receive from Mr. Brown on December 29, 1960, which is being introduced in evidence as Exhibit 29, the letter of Mr. Brown of December 29. Do you know where that letter is?

A. Yes.

Q. Where is it? Do you know where the letter of December 29 from Mr. Brown is now?

A. No.

Q. Would it have been put in the files of the Union Bank?

A. I can't remember. If I had taken it with me to Houstons for my winter holiday--

Q. It may be buried under the snow?

A. Yes.

"Q Now in a letter to Mr. Schmitz from you dated 1 September 1961, you refer to a letter of August 24 from Mr. Schmitz to yourself. Do you know where that letter is?

"A No.

* * *

"BY MR. O'DONOGHUE:

"Q Do you remember a gentleman named Benjamin A. Javits?

"A Yes.

"Q Who is he?

"A He is the brother of Senator Javits.

"Q And what is he, in his own right?

"A He was introduced to me by a client of the bank as a shareholder of Interhandel.

"Q He is a lawyer practicing in New York?

"A He is a lawyer, yes, so he is.

"Q Now, what was the purpose of that introduction?

* * *

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"THE WITNESS: This shareholder had discussed the Interhandel matter with Javits and Javits had certain ideas how the case could be settled.

"Q Isn't it a fact that Interhandel asked Mr. Javits how they could get rid of the trusteeship?

"A No. He had just his opinion about the case.

"I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."
 "I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."
 "I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."
 "I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."
 "I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."
 "I don't know whether he has or not. I don't know if he has
 the right to do so. I don't know if he has the right to do so."

"Q. Now, did he give you a receipt?"

"A. Yes."

"Q. Did Mr. Gordon give you a receipt?"

"A. Yes, he gave me a bill."

"Q. Then, did he give you an opinion?"

"A. I don't know whether he has or not. I don't know whether he has or not."

his opinion or whether he has not also in a draft his
 opinion, I don't know if it was written, I don't know if it
 was given to Mr. Gordon, perhaps to Dr. Schaefer who had
 "this part of our business."

"Q. Now, I don't know, I don't know--"

"MR. DISTRICT: Would you mark this
 Plaintiff's Exhibit 102 for identification."

* * *

"Q. Now, I don't know, I don't know--"
 "Plaintiff's Exhibit 102 for identification No. 102"

and ask you if you recognize that letter.

"A In this case, it was written, yes.

"Q Does that refresh your recollection to any extent about the Javits episode?

"A No.

"Q It does not?

"A No.

"Q The letter is correct, though, as to statement of facts?

"A Yes.

"Q Is that letter of Dr. Javits in the files of the bank?

* * *

"BY MR. O'DONOGHUE:

"Q You speak in that letter of seeing him when he came to America?

"A Beg your pardon.

"Q You speak in that letter to Mr. Javits of your intention of seeing him when you came to the United States.

"A Oh, we had quite a long discussion also which had absolutely nothing to do with Interhandel. It was for strategical material and which was much more the object of our discussion.

| Trial | Control | MCI | AD |
|-------|---------|-----|----|
| 1 | 95 | 85 | 75 |
| 2 | 95 | 85 | 75 |
| 3 | 95 | 80 | 70 |
| 4 | 95 | 78 | 68 |
| 5 | 95 | 75 | 65 |

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

Figure 1. The effect of the concentration of the *Agrobacterium* suspension on the transformation efficiency of *Agrobacterium* strains.

17. *Chlorophyll *a** and *Chlorophyll *b** were determined by the method of Arar and Cook (1967).

Printed 1991 - 1995 for the Department of the Interior

3720

"BY THE COURT:"

"9 I show you this has been marked Plaintiff's 103 for identification. All right. Did you ever see that letter before.

"A You know, it may have been, also in connection with our discussion of strategic material.

"Q You don't think that refers to Interchange?"

"A I cannot say yes; I cannot say no, because our problem was much more important in this respect for me to discuss with Justice, because the important case, I had no access, and it was not my job in the

bank to deal with the side of negotiating whatever it was with the Justice Department or with lawyers. This was the side of Dr. Schaefer, but strategic material was a case which was of interest to me. I am a director of Metallgesellschaft of Frankfurt, and this company was interested to have certain supplies of base metals out of the strategic material in the United States, and this was much more our part of discussion.

"Q When Mr. Javits says he would like to see your matter settled and that the Department of Justice shouldn't be in business, don't you think he is talking "about Interhandel?

"MR. STRICKLER: Objection.

- - - - -

MR. STRICKLER: Objection to that, your Honor, which should be pressed here. It is a matter as to what Mr. Javits would have meant.

THE COURT: I will overrule the objection.

- - - - -

(Continuation of reading of the deposition:

"THE WITNESS: It could also be because President Kennedy, when he was in Germany was in touch with people of Interhandel, in touch with people of Metallgesellschaft, Frankfurt.

"BY MR. O'DONOGHUE:

Q. Now, I am going to ask you to look at the
first page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the second
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the third
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the fourth
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the fifth
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the sixth
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the seventh
page of the exhibit, and tell me what you see.

A. I see a list of names, and I see a list of
addresses, and I see a list of dates, and I see a list of
times.

Q. Now, I am going to ask you to look at the eighth
page of the exhibit, and tell me what you see.

We rest, your Honor.

MR. O'DONOGHUE: Your Honor, I would like the Court to take judicial notice of the consent judgment in 4630-48 which is Societe Internationale v. Robert F. Kennedy. The amount is not in here, but for the purpose of getting in the actual amount in the final Order as to what Interhandel was getting---

1741 MR. WILSON: If your Honor please, Mr. O'Donoghue is referring, I think, to the last page of the printed booklet.

MR. O'DONOGHUE: Yes.

MR. WILSON: And my recollection is -- and this is subject to check, and I guess you are surprised that I wouldn't remember a thing like this: I think Judge Pine refused to sign a Consent Judgment, and we disposed of it by other methods. I can almost hear him saying now, that he wasn't going to take the responsibility for it.

THE COURT: I have that recollection, too.

* * *

1742 MR. O'DONOGHUE: Could you give us the amount that was intended could have been filled in if Judge Pine would have been willing to sign it?

MR. WILSON: Can I answer it this way? If you are interested in an Agreement as to what Interhandel actually received -- and I am giving it to you in round

9. 7. 8.

2745

THE OFFICE OF THE ATTORNEY GENERAL

Defendant.

CIVIL ACTION 85-67

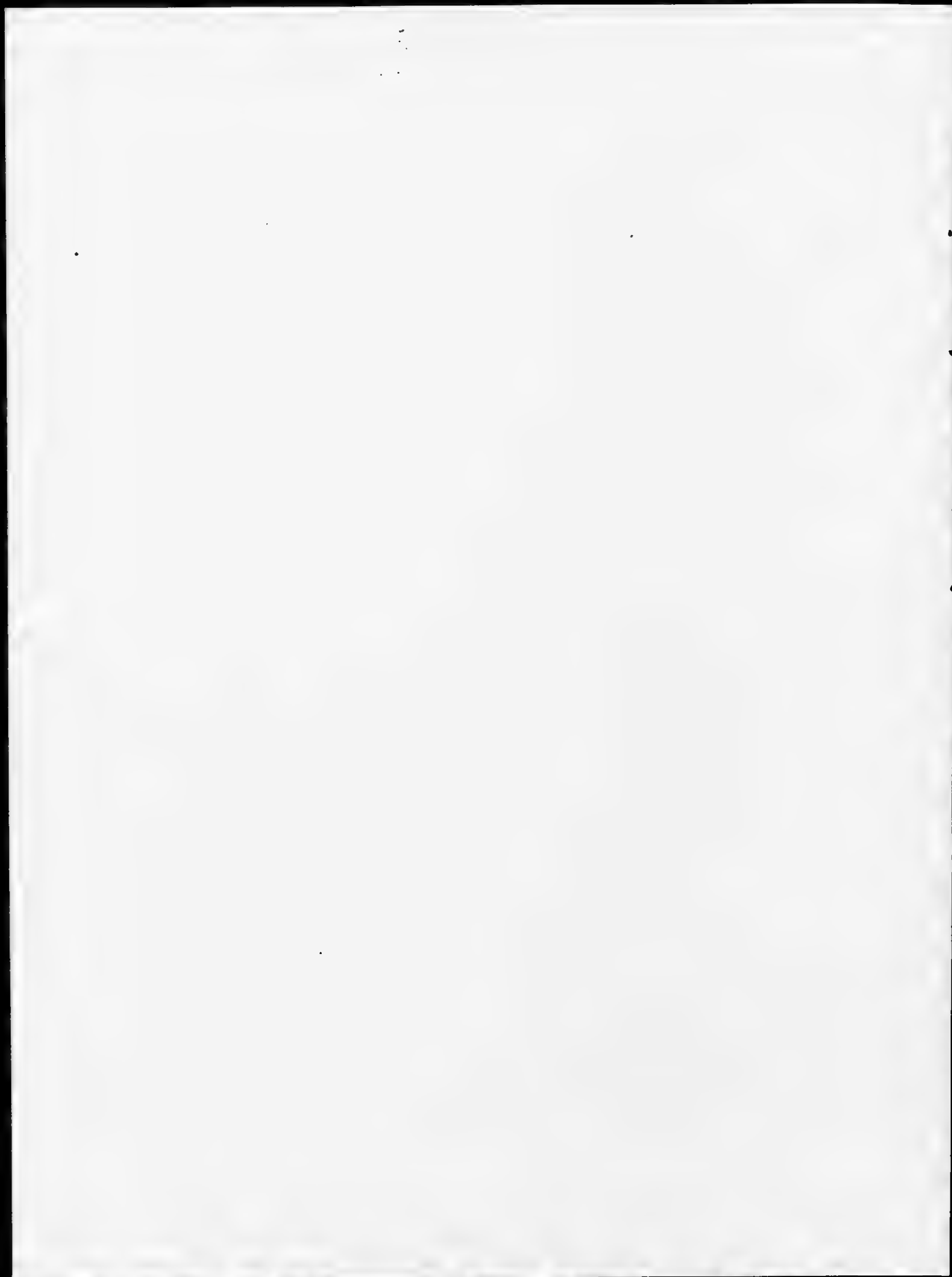
June 25, 1970

ARGUMENT
on
PLAINTIFF'S MOTION FOR NEW TRIAL
OR RECONSIDERATION OF FINDINGS AND ORDER

(P. 1746 - 1756)

Plaintiff's
Copy

MARIE S. TAYLOR
Room 4419 - U.S. Court House
Washington, D. C.



1746

The above-mentioned cause came on for hearing of oral argument on Plaintiff's Motion for a New Trial or Reconsideration of Findings and Order, before the Honorable JOSEPH C. McGARRAGHY, a Judge of the United States District Court, Washington, D. C. at 1:45 p.m. June 25, 1970.

APPEARANCES:

(Same as heretofore noted.)

1747

P R O C E E D I N G S

THE COURT: Call the case.

THE CLERK: Robert A. Schmitz versus Societe Internationale.

THE COURT: Is the Plaintiff ready?

MR. O'DONOGHUE: Ready, your Honor.

THE COURT: You may proceed..

MR. O'DONOGHUE: May it please the Court, we are here to present oral argument on our Motion for a new trial or reconsideration of your Honor's findings and Order in this case.

Basically, your Honor's opinion is to the effect that you found no evidence of an expressed promise, that although you did find evidence of services performed and a basis for a claim in quasisi-contract or unjust enrichment, that you found no evidence of the value of those services.

THE COURT: ... 1977 ...

... for ...

17.7 ...

MR. O'DONOHUE: ...

THE COURT: ...

MR. O'DONOHUE: ...

THE COURT: ...

MR. O'DONOHUE: ...

THE COURT: ...

I'm sorry for interrupting you; it was simply to---

MR. O'DONOHUE: ...

THE COURT: I shouldn't interrupt you.

MR. O'DONOGHUE: No, that's quite all right.

Don't feel any concern at all about that.

Let us call it a "quaisi-contract" that he performed services, for which it was presumed a promise to compensate him may have been made or presumption of it.

1749 On the matter of the actual agreement for compensation, I won't attempt to reargue that to your Honor. I am convinced that there was adequate evidence that points towards such an expressed promise. There is language in letters written by Dr. Schaefer to Mr. Schmitz in August of 1960, which as you will remember, is the summer of the first activity of the trusteeship, that promises had been made to him, both in Zurich and in Paris; and therefore, we believe that that is evidence that some promise of compensation was in fact made, which said that certain sums had been set aside for him. And I pointed out in our original argument that that could not possibly have any relation to the \$2,000 a month that was begun in October of 1960 relating back only to the first of June of 1960 because the main services were performed before that time.

However, I would like to concentrate, therefore, on the question of whether or not there is any real need to prove the value of services, or the damages in detail, or specifically if there is evidence that there was a basis for

It was to be expected that the Supreme Court of China, in solemn State or public Festival or Banquet Ceremony, would be obliged to alter its old traditions in support of our Nation for the Future, in clearly to the effect that,

And then it goes on to argue -- this is the Supreme Court:

"It is sometimes said that speculative
damages cannot be recovered because the amount is
uncertain; but such a rule will generally be for a purpose
able to such damages as it is to ascertain whether speculative

at all from the breach. Sometimes the claim is rejected as being too remote. This is another mode of saying that it is uncertain whether such damages resulted necessarily and immediately from the breach complained of."

I won't read it all. Much that follows there is quite pertinent here. And it says that:

1751

"Where, from the nature of the case, damages could not be measured with certainty by a fixed rule, all the facts and circumstances tending to show the probable amount of such damages should be submitted to the jury to enable them to form 'such reasonable and probable estimate as in the exercise of good sense and sound judgment they shall think would produce adequate compensation.'"

And it says that:

" We can see no objection in placing before the jury all the facts and circumstances of the case having any tendency to show damages or their probable amount, so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit."

In other words, the Supreme Court says that this matter as to speculation applies as to whether or not any damages exist, but that speculation within limits is

1552

There were various theories of the damage, but the incident caused of animals with the sword must have been

made on sheer speculation because it was submitted to the jury and the jury awarded her damages, but the trial judge granted a verdict N.O.V. and that was sustained by the Municipal Court of Appeals. But the United States Court of Appeals said that "such treatment is improper in a case of personal services. It said,

1753

"It might be appropriate where it involves the sale or exchange of property, real or personal. It is our view, however, that a measurement merely in terms of the value of real or personal property sold or exchanged fails of applicability in the requisite 'flexible manner' when a contract for personal services has been induced by fraud."

It makes no difference that that was induced by fraud here because the Court of Appeals said the only question we are considering is the amount of damages, or whether the damages were speculative or not. So, whether the damages were induced by fraud or whether a breach of contract, is of no significance on this score.

The Court then said that the various items of damages, the various elements that go to make up the question, that go to determine the question can be submitted to the jury for their best consideration, and it spoke about the type of instructions that might be given in the case:

"The jury will be instructed to ascertain the

Chapman, 10 years on to say:

"All the other powers of the world illuminate this question of what the Jew was right on. . . ."

that in a case where the measure of damages is a very difficult one -- and there it was not difficult as compared with this case -- that you cannot expect that the usual proof of the value of services or the amount of damages is available, that all the various elements have to then be taken into consideration.

Now, in this case, it seems perfectly clear that the word "unique" is applicable. I don't think we can find

any case where services were performed by anyone in identical or even similar circumstances. . The services performed by Mr. Schmitz were so unusual as not to be readily fitted into any category to determine their actual value. But, nevertheless, I believe that we introduced a great deal of evidence such as the Supreme Court or our Court of Appeals would think would be relevant, if not precisely, by statement of someone saying, "The value of the services is such-and-such, that such a result justifies this percentage of compensation, or such-and-such an hourly rate is applicable here." This is not the kind of case that lends itself to that sort of thing.

It is the result that is produced whether it is easy or difficult. It is like, in some respects, like a real estate broker or some other kind of broker: He may, with great ease, produce a result that is extremely valuable to his client, and if so, he is entitled to substantial compensation for that, just as an attorney may make a claim for services, let us say, when he has accomplished a result. It may be after an extended trial and multiple appeals, or it may be that he convinces the defendant without the necessity of even filing suit that his client should be compensated in some substantial way.

Well, under those circumstances, it is the result that counts; and a judge or a jury should, taking all those

1757

up to that and was maintained at approximately that value during the entire period of the trusteeship; and it was also the amount for which the settlement was finally made, with remarkably close per-share value of the stock that the bourse assessed it at by obtaining the services of Mr. Wilson. And I say, when he has accomplished a result of that kind, that the reasonable thing to do is to compensate him in an appropriate portion of that.

I think it is up to the Court to determine what that appropriate proportion is, considering that if either were an attorney, let us say, who produced a result of that kind, one-third would not be considered unreasonable so why would 5 percent, which is what there is certain evidence that, first if all, Mr. Schmitz said he was promised. There was the evidence from Dr. Sturzenegger when he was asked, didn't he promise something of that kind, or 2 or 3 percent? He said, "I don't know. I may have said 2 or 3 percent" or language of that kind, at least, so that there is evidence of that kind showing that values, appropriate values can be put on it.

Additionally, these are all just, let us say lines which interject somewhere and reach that result, which should be achieved by the Court, that is to say, the work he did for United States companies with the idea of selling the GAF stock to an American Company. We saw that in one

As things in, of my way, it differed in this
to the not more than a few days in between in between
and the end of the day, it was not yet
such further with the. It was some time and concern which
ultimately as a result of, the not black as then the stock
stock, or half the value of it, and that was the result
of their relation by Mr. Wilson and Mr. Spofford that
enlightened the United States Government.

And I must say, I see no basis for your Honor's conclusions that Mr. Wilson found that after the Democrats were elected in November of 1960, that there was no point in pursuing the matter any further with the Republican Administration because his very testimony is, that's when he did pursue it most thoroughly; and the Republican Administration was anxious to reach some conclusion before it left office.

1759 And then, the conclusion that nothing more was done until the next summer when some slight effort was made: The fact of the matter is that during that period, contacts were made with the incoming administration, and that very brief known as "The Trustee's Memorandum" which if your Honor read it, I'm sure you would find extremely convincing as to the merits of the Swiss position. I am convinced that that, delivered as it was, to the Assistant Attorney General, was largely instrumental in facilitating this ultimate disposition of the case; so I say it was this concept, these various activities that were performed by Mr. Schmitz, and if they did not in fact ultimately result, it was only by reason of the Swiss' own action, by their violation of the contract that had been so carefully drawn by Mr. Schmitz himself, and entered into by the Swiss, to the effect that the powers to the trustee were irrevocable, their revocation of those -- attempted revocation; and I say they were not revoked until rescinded -- that it was during that period that those powers were fully in effect that this basic agreement was entered into, and that this was a contract to which Mr. Schmitz was a third-party beneficiary, as it were; that it would give the irrevocable power to Charles Wilson to settle this matter and to settle all claims arising out of this, including those claims of Mr. Schmitz himself.

pursuant to Rule 59 and evidence offered as to that value.

1761 We are not prepared at the moment to go ahead with such proof, but we have made inquiries which lead us to believe that we could get excellently qualified, expert witnesses who could testify with some difficulty, because they recognize the uniqueness of these services, and that they don't fit into any of the ordinary categories; that we have been in contact with at least two other qualified experts in addition to Mr. Charles Wilson whom I believe should be permitted to testify as to his view, from his intimate knowledge of the value of the services of Mr. Schmitz.

And if your Honor is not satisfied that you can reach a conclusion as to the value of these services from what is already in evidence -- which, in my opinion, should be enough -- then, in justice you should permit us to-- you should reopen the case to permit us to offer testimony on this point so that you can determine the value of these services under the circumstances. And if, therefore, you are not satisfied with what you have presently available, I ask that you act to reopen for that purpose. Thank you.

THE COURT: Mr. Wilson.

MR. WILSON: I don't think I have anything to say in addition to that. We are confident as to the first two points that your Honor came to grips with, with the law as it is. Mr. O'Donoghue has not offered you anything in

pursuant to Rule 59 and evidence offered as to that value.

1761 We are not prepared at the moment to go ahead with such proof, but we have made inquiries which lead us to believe that we could get excellently qualified, expert witnesses who could testify with some difficulty, because they recognize the uniqueness of these services, and that they don't fit into any of the ordinary categories; that we have been in contact with at least two other qualified experts in addition to Mr. Charles Wilson whom I believe should be permitted to testify as to his view, from his intimate knowledge of the value of the services of Mr. Schmitz.

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MR. WILSON: I don't think I have anything to say in addition to that. We are confident as to the first two points that your Honor came to grips with, with the law as it is. Mr. O'Donoghue has not offered you anything in

announced it once before.

THE COURT: Do you want to say anything further, Mr. O'Donoghue?

1763

MR. O'DONOGHUE: Only this, your Honor, that we did suggest in our Proposed Findings various bases and amounts that would be appropriate here. We suggested 5 percent of \$340 million or 5 percent of 75 percent of that, or alternatively, 5 percent of \$120 million, all of which are based on recovery, or potential recovery, on the part of the Swiss.

We have suggested those figures, and we do say that, if necessary -- I mean, yes, if necessary, or if permitted, we will produce witnesses who can testify generally to that effect.

THE COURT: Let me ask you this question: That all proceeds on the assumption that you feel that the services rendered by Mr. Schmitz -- and correct me if I am wrong -- services rendered by Mr. Schmitz accomplished this result, the settlement which was ultimately carried out?

MR. O'DONOGHUE: I don't think they would necessarily have to do with that, but---

THE COURT: Don't you, in every instance, use your percentage figure as a percentage of the settlement?

MR. O'DONOGHUE: Yes.

THE COURT: --or of some other settlement which

1765

your Honor knows that he did work in the interest of the Swiss for a long period of time, part of that time without any compensation at all and part of that time for a very minimum amount of compensation.

THE COURT: Of course, as to that second part you specially waived. You waived the Second Count of the Complaint which related to that second period of service, did you not?

MR. O'DONOGHUE: No, I don't think we did. We just said we didn't put a definite---

THE COURT: I didn't understand you are proceeding on the Second Count. Am I wrong on that?

MR. O'DONOGHUE: We are not proceeding on the Second Count, but we are proceeding on quantum meruit.

THE COURT: But you were proceeding on this second period starting June 1, 1960?

MR. O'DONOGHUE: We are not proceeding on that, but on the actual amount of money that---

THE COURT: As I remember it, the Second Count made a claim, was it for \$150,000?

MR. O'DONOGHUE: Yes. Credit for \$38,000.

THE COURT: Credit for what had been paid, but you did not offer any evidence at trial in support of that?

MR. O'DONOGHUE: No, your Honor, we didn't because we withdrew that count and proceeded simply---

THE COURT: That's the point I am trying to make.

1911

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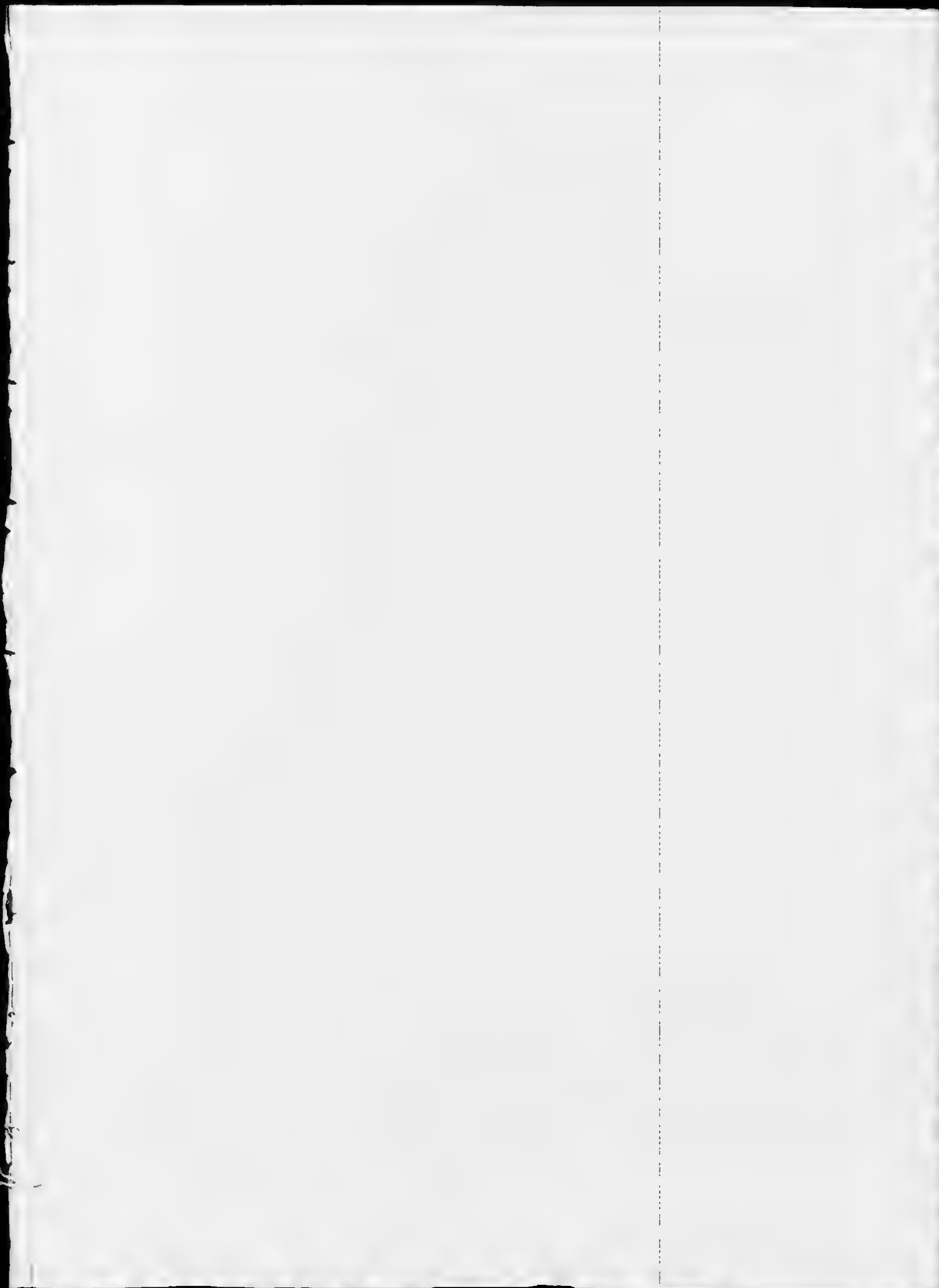
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ,

Appellant,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS
INDUSTRIELLES ET COMMERCIALES, S. A. also known
as INTERNATIONALE INDUSTRIE UND HANDELSBE-
TEILIGUNGEN, A. G.,

Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

BRIEF FOR ROBERT A. SCHMITZ,
APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

FILED DEC 23 1970

Nathan J. Paulson
CLERK

Daniel W. O'Donoghue
Ross O'Donoghue
George A. Fisher

Union Trust Building
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IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ,

Appellant,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS
INDUSTRIELLES ET COMMERCIALES, S. A. also known
as INTERNATIONALE INDUSTRIE UND HANDELSBE-
TEILIGUNGEN, A. G.,

Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

BRIEF FOR ROBERT A. SCHMITZ,
APPELLANT

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the trial court was in error in finding as a fact that defendant did not expressly promise to pay plaintiff for his services when there is direct evidence to the contrary and where the overwhelming circumstantial evidence demonstrates that an agreement for compensation had been reached between the parties.

2. Whether the trial court was in error in finding as a fact that plaintiff was not entitled to the compensation promised for devising, implementing and furthering a plan for the recovery of defendant's extremely valuable property, which had been seized by the United States government, whereby the entire authority and responsibility for settlement of the controversy and for sale of that property, and for the resolution of all claims, were irrevocably committed to the discretion of the trustee, including the payment of compensation to the plaintiff, when it was the breach of the agreement by the defendant which made impossible the completion of the trustee's function.

3. Whether as a matter of law the trial court properly permitted the defendant to deny compensation to the plaintiff, who was a third party beneficiary of an irrevocable contract between defendant and the trustee which provided for the award of compensation to the plaintiff by the trustee, when defendant breached the contract and frustrated the accomplishment of the purposes of the contract.

4. Whether the trial court erred in refusing to award compensation to the plaintiff for the very extensive services performed by the plaintiff for the defendant at its express request and with its full knowledge and encouragement.

5. Whether the trier of fact will be permitted to shirk his duty to find the value of plaintiff's services performed at the instance of the defendant on the pretext that he was incapable of making the determination without the aid of expert testimony, especially where any difficulties in ascertaining the measure of damages resulted directly from defendant's wrongdoing, where there are numerous indicia and measures of such value in the record.

6. Whether the trial court abused its discretion in refusing to reopen the judgment to permit the introduction of expert evidence proffered by the plaintiff on the value of his unique services after the Court deemed itself incapable of making such a determination without the aid of such

evidence and stated that the lack thereof was the only obstacle to awarding damages since plaintiff had performed valuable services for defendant at its request.

An aspect of this case previously was before this Court under the title *Robert A. Schmitz v. Societe Internationale, etc. and Hon. Henry H. Fowler*, and designated Appeal No. 19,995.

REFERENCES TO RULINGS

| Date of Issuance | Nature of Ruling | J.A. Page |
|------------------|--|-----------|
| May 7, 1970 | Memorandum Opinion of District Court to Serve as Findings of Fact and Conclusions of Law | 30 |
| May 15, 1970 | Judgment | 52 |
| July 1, 1970 | Written Order Denying Plaintiff's Motion for Reconsideration or, Alternatively, to Open the Judgment | 84 |

STATEMENT OF THE CASE

Nature of the Case

Appellant Robert A. Schmitz (hereinafter sometimes referred to as "plaintiff") brought the instant suit against Appellee, Societe Internationale Pour Participations Industrielles et Commerciales, S.A., also known as Internationale Industrie und Handelsbeteiligungen, A.G. (hereinafter referred to as "Interhandel") for compensation for services he rendered to it in devising and effectuating a plan by which an outstanding American was persuaded to intercede on its behalf with the leaders of the United States government to obtain the return of its stock in General Aniline and Film

Corporation (hereinafter referred to as "GAF"). (J.A. 8) The stock had been seized at the outbreak of World War II and had remained continuously vested since then with little prospect of its return. (J.A. 91, 107, 498, 502, 1030-31, 1047, 1261-62, 1271-72) As a result of plaintiff's plan and efforts, the services of Charles E. Wilson as trustee for Interhandel were secured to negotiate for the return of its property. He was able to confer with highly placed members of both the Eisenhower and Kennedy administrations (J.A. 165, 181-82, 523, 524, 526, 527-28, 731) and to take those steps which led to the prompt and extremely satisfactory settlement of the long standing dispute. (Def. Ex. No. 70)

There are two bases for plaintiff's claim. The first is that defendant promised him 5% of the recovered funds solely for obtaining the services of Charles E. Wilson, since Interhandel was confident that if Mr. Wilson would undertake the task, success was assured. The second basis is one of implied contract or unjust enrichment. Whether or not plaintiff proved an express promise, there was an implied promise to compensate plaintiff for the services he performed at the request of defendant. Plaintiff conceived and implemented the means by which the return of the seized property was brought about. This latter basis is predicated upon the principle that services performed upon request should be paid for. It would be unjust to permit the defendant to enrich itself without paying to the plaintiff such portion of the fund which he helped to create which would fairly reward him for his contribution. The complaint asked that the fund which, at the time of filing, was still held in substantial part by the United States government, be impressed with a lien to formalize the equitable lien which plaintiff possessed in the fund. The fund in its entirety has since been turned over to the defendant (J.A. 1174-75) but no one contends that this action can defeat the equitable processes of this Court.

The trial court, sitting without a jury, filed an opinion on May 7, 1970, to serve as its findings of facts and conclusions of law, and held for defendant. In this opinion the District Court declared that there was no express contract and that although the plaintiff undoubtedly performed substantial services for the defendant, plaintiff had failed to establish the monetary value thereof. (J.A. 46, 48, 51) Plaintiff filed a motion urging that adequate proof had been adduced to justify a substantial money judgment to be measured as a proportion of the benefit received by the defendant. Alternatively, plaintiff asked that the case be reopened to give him an opportunity to introduce expert testimony of the value of his services, (J.A. 53) pursuant to Rule 59(a) Fed. R. Civ. P. After oral argument, the motion was denied. (J.A. 84-85) and this appeal by timely notice was filed on July 27, 1970. (J.A. 86)

Statement of Facts

GAF, the company which plaintiff helped the defendant to recover, was chartered in Delaware in 1938 upon the merger of two other companies which Interhandel or I.G. Chemie, as it was then called, had controlled. (J.A. 90, 117, Pl. Ex. Nos. 105, 131) Its organizing genius and first president was Dietrich A. Schmitz, plaintiff's father, (J.A. 92, 116, 117) who, for many years prior to that time, had been the principal representative of Interhandel and I.G. Chemie in the United States. (J. A. 116) GAF became preeminent as a manufacturer of photographic film and equipment on the one hand, and dyestuff materials on the other. (J.A. 91) Dietrich A. Schmitz held the proxies for the Swiss and operated GAF for them. (J.A. 92, 117; Pl. Ex. No. 131) He enjoyed the fullest confidence of his Swiss principal which, at the time of the seizure, owned over 90% of the outstanding stock of GAF. (J.A. 90)

Apparently believing that Germans somehow controlled Interhandel and thus, in turn, controlled GAF, (Pl. Ex. Nos. 105, 131) the American government even before Pearl Har-

bor began to exert various means of control over the company. (J.A. 92) Very shortly after this country became involved in World War II, the company was seized as "foreign property" and the Alien Property Custodian, his predecessor and successor, ran the company for the next twenty-three years. (J.A. 91-92; Def. Ex. No. 70) Dietrich A. Schmitz resigned as president in March of 1942. All of this was without the consent of the Swiss, who never revoked their proxies to Dietrich A. Schmitz (Pl. Ex. Nos. 105, 131) and never outlived the sense of outrage that property of citizens of a friendly power was so summarily violated. (J.A. 734, 1027, 1206)

Nothing could be done by the Swiss to recover their property during the war, (J.A. 94-96; Pl. Ex. 105) but efforts to recover the property were instituted as soon as possible after the war by Dietrich A. Schmitz and by John J. Wilson, who had been brought into the picture even prior to the war. (Tr. 6) When it appeared that negotiations might not be successful and that the statute of limitations would soon run, (J. A. 99-101; Pl. Ex. No. 105; Def. Ex. No. 70, p. 4) a suit was instituted in District Court by Interhandel against the Attorney General on October 21, 1948. (Civil Action No. 4360-48) It was the lack of success of this return suit which made the plan of the plaintiff here so necessary.

The history of the Interhandel suit against the Attorney General fills many thick volumes. Suffice it to say that despite many ups and downs, it made no forward progress whatever in the next twelve years. Countless motions and counter-motions were made in this Court. A special master was appointed. Various aspects of the case went to this Court five separate times and to the Supreme Court three times.¹ It stood dismissed for a per-

¹*Societe Internationale v. McGrath*, 86 U.S. App. D.C. 157, 180 F.2d 406 (1950)

Kaufman v. Societe Internationale, 88 U.S. App. D.C. 296, 188 F.2d 1017 (1951), *reversed*, 343 U.S. 156 (1952)

Societe Internationale v. Brownell, 96 U.S. App. D.C. 232, 225 F.2d 532 (1955), *cert. denied*, 350 U.S. 937 (1956)

iod of five years. (J.A. 103-04; Def. Ex. No. 18(a)(b)(c) (d) Significantly, it never got beyond the discovery stage. (J.A. 107-09; 482-83, 1047) Indeed, as late as 1960 the Swiss delivered to the government over 200,000 documents which the Department of Justice averred would take at least two years to examine before it could decide what it would do next. (J.A. 108-09, 482-83; X-283) Department of Justice attorneys had built their careers on the case (J. A. 745, 746, 1288, 1304; X-178, X-187) and showed little interest in relinquishing their livelihood. The attorney for Interhandel deserved high marks for perseverance but had earned none for success.

In 1958 the principal Swiss owner of Interhandel, Dr. Hans Sturzenegger, apparently despairing of success, relinquished the control of Interhandel to a consortium of the three largest Swiss banks. (J.A. 106, 161-62, 523, 1026, 1027; X-35) In June of the following year, he sold the bulk of his remaining stock in Interhandel to Union Bank, (J.A. 186-87, 1389-90, 1392; X-37) whose Chief General Manager, Dr. Alfred Schaefer, became Interhandel's chief executive officer. (J.A. 161-62, 194-95, 1026, 1380; X-37) He was impatient of results but he too had no hope of any successful termination of the litigation in the foreseeable future. (J.A. 1030, 1032, 1043, 1047) A suit by Switzerland against the United States in the World Court had produced no results and had been brought to a standstill by the refusal of the United States to recognize the court's jurisdiction. (J.A. 100-101, 105; Pl. Ex. No. 105) Attempts at diplomacy and the invocation of the so-called Washington Accord, which the Swiss considered was intended to resolve just such disputes, were rebuffed by the American government. (J.A. 100-101; Pl. Ex. No. 105) Various attempts at personal intervention at all levels brought no

Societe Internationale v. Brownell, 100 U.S. App. D.C. 148, 253 F.2d 254 (1957), *reversed*, 357 U.S. 197 (1958)

Rogers v. Societe Internationale, 107 U.S. App. D.C. 388, 278 F.2d 268 (1960).

results and a good deal of harm to the Swiss cause. (J.A. 1289, 1345; X-551)

Not only the stockholders of Interhandel, but the Swiss government and its citizens, were frustrated and angered. It was an attitude that spread to much of the world. (J.A. 197, 1261-62) There was a conviction abroad, much to the damage of the good image of America, that it was unwilling to face up to the justice of the controversy and was fobbing off the Swiss with hypertechnical and even hypocritical defenses. (J.A. 538, 832, 833, 1262, 1263) The Swiss believed that if only they could get a fair consideration of the merits of their case by those Americans in ultimate authority, there could be no question but that they would prevail. (J.A. 202, 253-258, 1047-48)

The plaintiff here came up with a carefully devised plan that would get them just such a hearing. No one could have been better qualified to appreciate all of the nuances of the situation. He had been intimately acquainted with GAF and its Swiss owners from his earliest youth. (J.A. 97, 120, 123, 427, 434, 438, 575-76) He saw his father put together this splendid company and he suffered with him through its seizure and emasculation. He supported his father's efforts in behalf of the Swiss when his father was harassed and persecuted at every turn by the United States government. (J.A. 117, 118-121, 348-49) He had seen his father's assets frozen, had stood by him when he was indicted on anti-trust charges and charged with tax evasion. This was all part of a futile effort by the government to compel his father to betray his trust and admit, contrary to the truth, that GAF was German controlled. (J.A. 118-19, 120)

He had gone with his father to Switzerland after the war to confer with the Swiss principals on means to secure the return of the property. (J.A. 119-20) He renewed his friendship with Dr. Sturzenegger, and he maintained his ties with the other officials of the company. (J.A. 119-123) Because of his close association with the inner circles of Interhandel he had from time to time been selected by

a number of leading American companies to assist them in their efforts to persuade the Swiss to work out methods by which, with the blessing of the American government, they would be able to obtain Interhandel's interest in GAF. (J.A. 124-27, 130-31, 140-42, 144-51, 152, 419-21, 429-33, 452-57, 722-24; X-1 thru X-19) Although none of these plans came to fruition, they assured plaintiff of full knowledge of all developments in the GAF situation and afforded him a constant access to the Interhandel management, particularly Dr. Sturzenegger, on terms of intimacy and confidence. (J.A. 134, 558-59, 562, 567-70, 584-85)

His endeavors also brought him the friendship and trust of Charles E. Wilson who, as chairman of the board of W. R. Grace & Co., had made serious, if ultimately unsuccessful, efforts to buy GAF from the Swiss. (130, 134, 144, 722, 723-24) Mr. Wilson, after retirement as president of the General Electric Company, and after serving as Chairman of the Production Committee of the War Production Board during World War II and as Defense Mobilizer during the Korean conflict, (J.A. 199-200, 718-19) had brought his broad expertise to the Grace Company in 1953 to guide them in their plans of diversification. (J.A. 720-22) High on the list of the possibilities to which he devoted much effort in the period 1953-56 was the acquisition of GAF. (Ibid) He entered into an agreement with plaintiff on behalf of Grace which, aside from substantial payments, would have most handsomely rewarded plaintiff if success had been achieved. (J.A. 130, 133-34, 136, 432-33; X-7)

Late in November, 1958, plaintiff went to Basel on behalf of Food Machinery & Chemical Corporation to see if something could be worked out in respect to that company's desire to acquire GAF. (J.A. 151-52, 457-58; X-19) It was during this trip that the Swiss told him that Interhandel had finally determined that it did not want to sell out its interest in GAF to an American firm. (J.A. 158, 164) and declared that Interhandel now planned to devote all of its efforts to effecting the return of the company.

(J.A. 158-59) It was at this time and under these circumstances that plaintiff first crystallized and divulged to Dr. Sturzenegger a plan that had long been germinating in his mind.

Plaintiff pointed out that all ordinary and some extraordinary methods of seeking to effect recovery had failed because Interhandel had never been able to command the interest of those who counted in the highest echelons of the American government. Plaintiff proposed that the Swiss convey full and irrevocable powers for negotiating complete and final settlement to an outstanding American of impeccable qualifications who would be above politics and yet would have entree to every door of the administration. (J.A. 159) The logical choice if he could be persuaded to undertake it, was Charles E. Wilson. (J.A. 159, 161-62) He had served two Democratic administrations in positions of the most vital importance to the country's safety, but also was a close friend of then Vice President Nixon and President Eisenhower. (J.A. 524-26, 527, 719, 1036)

Plaintiff's plan was enthusiastically received on behalf of Dr. Sturzenegger and Mr. Schmitz was encouraged to use every effort to try to enlist Mr. Wilson's help. (J.A. 161-63) Although at this time Dr. Sturzenegger had relinquished the management of Interhandel, he still owned the largest block of Interhandel stock and so possessed an effective voice in the control of Interhandel. (J.A. 155, 161, 1389-90)

Mr. Wilson was naturally reluctant to undertake the burdens of such a task. He disliked the idea of taking an adversary position against his own government and he was not then satisfied that the claimants were justified. (J.A. 527, 533, 726-27, 1017) Also, he made it clear that he would not assume any responsibility until he first determined that his activity would not be offensive to the President. (J.A. 164-65, 181-82, 524-25, 526, 527-28, 727, 731;

X-24) Other considerations that militated against acceptance were his heavy involvement in the People to People program, the chairmanship of which he had accepted at President Eisenhower's special instance. (J.A. 719-20) At his age of 72, and after sixty years of hard work, he felt he should be thinking of honorable and deserved retirement rather than increased and difficult duties. (J.A. 527, 718-19, 726-27, 1017) On the other hand, Mr. Wilson found it difficult as always to resist a call to patriotic duty and plaintiff emphasized the importance to the United States of settling the GAF controversy. (J.A. 727, 1262, 1263) Plaintiff explained to Mr. Wilson that his country was acting unjustly and that all the world shared that view. He pointed to the immeasurable harm that this country's reputation was suffering as this running sore continued to fester. (J.A. 522, 525-26, 527-28) Mr. Wilson was shown, in the fullest detail, that the seized company was untainted and was indeed Swiss owned. It was urged on Mr. Wilson that he, and perhaps he alone, had it within his competence to settle this controversy once and for all to the honor and benefit of the United States. (J.A. 164-65, 167-72, 185-87, 192-93, 522-28, 726-32)

Plaintiff was authorized by Dr. Sturzenegger to spend his full time and effort in carrying on this endeavor to convince Mr. Wilson that he should lend his assistance to the cause of the Swiss. (J.A. 161-63) Because plaintiff knew that a great deal of time, effort and expense on his part would be required, and because plaintiff in effect was working against his own financial interest by helping the Swiss obtain the return of their property without a sale in which plaintiff was a broker or participant, plaintiff declared that he definitely expected to be compensated for his services. Dr. Sturzenegger indicated that a commission of 2% or 3% of the recovery might be acceptable to the stockholders. (J.A. 388) but no final agreement on compensation was reached. (J.A. 388) Dr. Hugo Frey, attorney for Interhandel (J.A. 155, 161, 728) came to the United States on three separate occasions during the winter and spring of

1959 to lend his knowledge and authority to the efforts of Mr. Schmitz in this direction. (J.A. 169-72, 185-87, 192-93, 1367-68; X-12) During this time, Mr. Wilson was interested enough in their proposal to consult with the Attorney General and the President to determine whether such an undertaking would meet with their approval. (J.A. 164-65, 181-82, 524-26, 527-28, 727, 731) However, he still was unwilling to commit himself except in this very preliminary way. (J.A. 514-15, 522, 527-28)

Efforts along these lines were suspended in June of 1959 when several events occurred almost simultaneously. At this time Dr. Sturzenegger sold the bulk of his stock in Interhandel to Union Bank, (X-37) and the management of Interhandel entered a transitional stage. (J.A. 531-33) Moreover, legislation was pending in the United States Congress to require the government to sell GAF. (J.A. 192-93) When Dr. Frey advised plaintiff to suspend his efforts, he also suggested that if the legislation did not pass, plaintiff should submit his proposal to Dr. Alfred Schaefer. (J.A. 193)

Accordingly, in October of 1959, Mr. Schmitz went to Zurich and met Dr. Schaefer for the first time. (J.A. 193, 1368) Plaintiff outlined his plan which was received enthusiastically. Dr. Schaefer was thoroughly familiar with Charles E. Wilson's outstanding reputation (J.A. 224, 1036) Plaintiff was told that Interhandel would gladly give Mr. Wilson plenary and irrevocable powers to negotiate and carry out all aspects of settlement if only they could obtain his good offices. (J.A. 200-203, 1036-38, 1045-46; X-41-49) Dr. Schaefer was positive that if Mr. Wilson could be persuaded to act on behalf of Interhandel, its problems would be solved and, according to Mr. Schmitz, said that Interhandel would pay Mr. Schmitz 5% of any recovery. Dr. Schaefer at trial denied that there was any discussion of compensating Mr. Schmitz, (J.A. 1177-78) but in a letter of August 30, 1960, he said that "Already at the occasion of our meetings in Zurich and Paris I told you

how much we appreciate your assistance and that we entirely agree to hold at your disposal certain sums as a compensation for the time you spend in this connection." (X-151)

In the course of the next several days in the executive offices of Union Bank, plaintiff drew up a Memorandum of the plan that he would work to advance. (X-41) It stated that the trustee shall be in a "position to see that all equities shall be satisfied". Dr. Schaefer approved it without amendment. (J.A. 204-205, 1037; X-46) But Mr. Schmitz was admonished that all negotiations must be kept in the strictest confidence and secrecy. (J.A. 197, 203, 387; X-54) Not even John J. Wilson, trial counsel for Interhandel, should be permitted knowledge of attempts to obtain the services of Charles E. Wilson as trustee. (J.A. 231, 263, 742, 1057, 1269) Plaintiff was told that the position of Interhandel stock on the Bourse would be highly sensitive to any premature disclosure and that whatever bargaining position the Swiss might otherwise have in connection with the return would be destroyed if Mr. Wilson refused to accept the tender. (J.A. 197, 203, 387, 394 1196, 1198; X-41, X-54) The speculative nature of Interhandel's stock became clear when it was admitted at trial by Dr. Schaefer that Union Bank was actively trading Interhandel's shares on its own behalf and on behalf of clients, (J.A. 1198, 1216-17, 1393-94) and that when the acceptance by Mr. Wilson of the trusteeship was formally announced in June of 1960, the value of Interhandel stock on the exchange advanced over 50 million dollars. (J.A. 1203-04) Mr. Schmitz was authorized and instructed to spend all his time and effort to bring about this result. It would be tedious to reiterate here work carried on by the plaintiff on behalf of the defendant in the winter and spring of 1959-60. The record is replete with the correspondence, cables, transatlantic telephone calls, visits of Dr. Ulrich Wehrli as representative of Interhandel to Mr. Schmitz in this country. (J.A. 229, 617-18, 628-30, 639-41) and the visits of

Mr. Schmitz to Zurich, not to mention the constant importunities of Mr. Wilson by plaintiff. (J.A. 207-08, 216-17)

Mr. Wilson finally agreed to meet with Dr. Schaefer and other representatives of Interhandel in Paris at the end of April, 1960. At that time he indicated tentative acceptance of the powers and the trusteeship in accordance with resolutions drawn up by the plaintiff and adopted without change by the executive committee of Interhandel's board of directors. (J.A. 219-22, 242-43, 623-24, 1045, 1267; X-97) Charles M. Spofford, Esquire, an outstanding New York lawyer, who accompanied Mr. Wilson as his counsel, found the documents adequate for the proposed purpose. (J.A. 1267-68) Dr. Schaefer expressly stated at that time that Mr. Wilson was authorized to apply twenty to thirty million dollars to the satisfaction of claims. (J.A. 258, 734-35) At that time Dr. Schaefer praised plaintiff for his accomplishments and thanked him for the work he had done on behalf of Interhandel. (J.A. 255, 259, 735, 739-40, 975, 984, 1267) Moreover, immediately after the Paris meeting, Dr. Wehrli even suggested that some additional benefits from a tax standpoint, such as stock options, could be devised to compensate plaintiff. (J.A. 265, 267-68, 665)

Mr. Wilson made no final commitment to accept the powers, but promised to advise Interhandel, through Mr. Schmitz, within a few weeks. (J.A. 259, 659, 737, 1054, 1268; X-119, X-121) Interhandel's representatives insisted that plaintiff continue his efforts on their behalf and kept up the constant flow of communications with Mr. Schmitz by every possible means. (J.A. 265-66, 270, 673-74, 735; X-119)

On May 23, 1960, Mr. Wilson notified plaintiff that he had decided to accept the powers. (J.A. 274-75, 740-41; X-121) and plaintiff in turn so advised Dr. Schaefer. (J.A. 275) Although plaintiff had rendered performance under his agreement he was retained in the very thick of the matter at the special instance of Dr. Schaefer and his col-

leagues. He was consulted about how and when to announce the trustee's acceptance; (J.A. 278-81; X-121 thru 125) he was asked to supply background information to the trustees and his counsel from his enormous fund of knowledge of the affairs of GAF and its parent; (J.A. 297-98, 303, 334-36, 347-48, 377, 748-49, 749, 750, 1269, 1272, 1283, 1333-34) and was urged to report frequently and in detail on the progress of the trustee's efforts. (J.A. 259, 304-05, 335-36, 735, 1267-68, 1333-34; X-120 thru 151, X-165) The plaintiff was fully occupied during all of the balance of 1960 and during much of 1961 in performing all of these services and many more. (J.A. 748-49) The record is full of the correspondence with him, transatlantic calls to him, his reception of emissaries of the Swiss and his travels to Switzerland to report and receive instructions. In general he acted as consultant as well as intermediary between the officials of Interhandel on the one hand, and the trustee and his counsel on the other.

Meanwhile, Charles E. Wilson and Charles M. Spofford lost no time in supplying the Department of Justice with their credentials and instituting negotiations with the Alien Property Custodian as well as exploring other avenues of influence. (J.A. 289, 295-96, 303, 742-44, 1273-74) Their understanding was that the Swiss wanted a complete return of their GAF stock and that any compromise might seem an admission of taint and would, therefore, be dishonorable. (J.A. 733-34, 746-47) The trustee agreed; his mission was to reject compromise and obtain total restitution. (J.A. 321-22, 746-47; X-187) As a result of his endeavors, it was not long before the government was talking in terms of a 50-50 settlement, but this suggestion was rejected out of hand by the trustee. (X-128, X-140)

After the November election in 1960 in which John F. Kennedy was elected, the outgoing Republican administration became more amenable to a favorable settlement if it could be effected before January 20, 1961. It was clear that the Alien Property Office wanted to terminate

the GAF controversy before the new administration came into power. Mr. Wilson testified that following the election Colonel Townsend, Alien Property Custodian, said the government would be willing to accept a proposal that the stock of GAF be sold forthwith and the proceeds be divided 75% to the Swiss and 25% to the United States, provided the latter's share amounted to at least 40 million dollars, to cover taxes alleged to be due and the government's management expenses. (J.A. 321-22, 746-47, 779-80, 783-85, 806, 807, 812, 817-18) Plaintiff did not recommend this settlement but he believed that the proposition should be put to the Swiss. Early in December, plaintiff, at the trustee's request, telephoned Union Bank to advise that the trustee was willing to travel to Zurich to discuss the proposal set forth by the Department of Justice. (J.A. 324-25, 710, 746) Since Dr. Schaefer was not immediately available, Dr. Wehrli was sent to New York where the offer was thoroughly canvassed. (J.A. 326, 327-28, 710, 746-47; X-186) The determination was then made to suspend negotiations and to wait until the new administration was in office before proceeding further. (J.A. 327-28, 710-11, 746-47) Dr. Wehrli commented that "there was no point in making a settlement with Colonel Townsend for the sake of settlement." (J.A. 328, 711)

In preparation for an all out effort with the Kennedy administration, the trustee's counsel, with the assistance of the plaintiff, prepared a comprehensive history of the case which was, in fact, a most convincing brief for Interhandel's position and a devastating criticism of the treatment that had been accorded it by the United States government. (J.A. 334, 750, 1280-82, 1290; X-309; Pl. Ex. No. 105) Before reopening discussions, however, it was necessary for the trustee to wait until a new Assistant Attorney General was appointed to take charge of the alien property matters, of which the GAF controversy was by far the most important item. (J.A. 467) Contacts were made by the trustee with the new Attorney General and as soon as William H. Orrick, Esquire, was appointed Assistant

Attorney General handling alien property matters, Mr. Spofford got in touch with him to explain the entire situation in person and through the medium of the trustee's memorandum. (J.A. 469, 1080, 1287) During the late spring and early summer of 1961 these efforts were carried on and the procedure for affecting settlement was approaching fruition. (J.A. 821, 1291, 1339-40, 1344, 1355)

The trustee and his counsel hardly had a chance to open discussions with the new administration when Dr. Schaefer, in disregard of the exclusive authority granted to the trustee, personally sought to intervene. (J.A. 336, 340-41, 1218, 1285; X-305) The main effect of his intervention was to so anger Mr. Orrick by his calumny of the United States government that Dr. Schaefer was requested to leave Mr. Orrick's office. (J.A. 470, 481) Thereafter, Mr. Spofford and Mr. Wilson patiently got the train back on the track and by midsummer Mr. Spofford anticipated that a settlement acceptable to the Swiss would soon be reached. (J.A. 355, 1006, 1288-91; X-309, X-313)

Dr. Schaefer's personal intervention in May was a precursor to his later breach of the trusteeship agreement. Aware of the brightened prospects for favorable settlement and in order to avoid the obligations to the plaintiff, Dr. Schaefer used Prince Radziwill to arrange a meeting with Attorney General Robert F. Kennedy, (J.A. 1119, 1292, 1295, 1340-42, 1357-58) and instructed John J. Wilson to open discussions with Mr. Orrick without the knowledge of the trustee and his attorney. (J.A. 473, 484-85, 499-500) There are indications that even before the meeting, Dr. Schaefer sent a proposal to the Attorney General for a 50-50 settlement. (J.A. 1112, 1119, 1120; X-502) When Dr. Schaefer met the Attorney General in late October and discussed the offer (J.A. 364, 753-54, 986; X-369) the Attorney General jumped at the chance to settle on terms much more favorable than either the Attorney General or Mr. Orrick expected. (J.A. 1126; X-370, X-373, X-375) The basic 50-50 settlement agreement proposed by Dr. Schaefer was accepted in principle at that time and confirmed in an

exchange of telegrams in January, 1962. (J.A. 753-54, 987; X-375) The speed with which this agreement in principle was reached was indicative of the solid groundwork laid by the trustee and his attorney. While the trusteeship continued in effect until October 1, 1962, (J.A. 756; X-317, X-319, X-320) neither the trustee nor his attorney were able to function effectively after Dr. Schaefer's meeting with the Attorney General. (J.A. 364-65, 753-54, 987)

Pursuant to the basic agreement between Attorney General Kennedy and Dr. Schaefer, the details of which were worked out by Mr. Orrick and the Swiss in Munich in April, 1962, Interhandel's stock was sold, and in due course, after certain adjustments, the net proceeds from the sale were divided equally between Interhandel and the United States. (J.A. 109-11; X-373, X-375) The gross sales price was \$325,000,000-\$340,000,000. (J.A. 109) Interhandel's share of the net proceeds was approximately \$145,000,000. (J.A. 111, 1408) These sums do not include the value of Interhandel's blocked dividend shares and cash, plus statutory interest, nor do these sums reflect other substantial dollar amounts abandoned by Dr. Schaefer. (Def. Ex. No. 70) After set-offs, Interhandel actually received \$121,000,000. (J.A. 111, 1408) The proceeds of the settlement increased the value of each Interhandel share by about \$900. (J.A. 1175, 1176) This actually represented almost exactly the value per share as that to which the stock jumped upon announcement of Mr. Wilson's acceptance of the trusteeship. (J.A. 1203)

Even after Dr. Schaefer's second intervention and the resultant disruption of the trusteeship, plaintiff continued to work for a favorable resolution of the controversy. He continued to work with the trustee, (J.A. 763) who felt duty bound to remain in the case for the benefit of the stockholders and the equitable beneficiaries, (J.A. 373-74, 377-78) and he completed the preparation of a lengthy affidavit by his father (Pl. Ex. No. 131) which he eventually turned over to the Swiss and to the Department of Justice. (J.A. 370, 375-76, 541-43) It was a powerful testament

to the bona fides of the Swiss cause. (J.A. 348, 354-55, 370-72, 541-42; X-268; Pl. Ex. No. 131) With the knowledge of the trustee, plaintiff travelled to Zurich in March, 1962, to personally advise the other members of Interhandel's executive committee about Dr. Schaefer's breach of the trusteeship. (J.A. 371-72, 378; X-471, X-472)

For all of his services, plaintiff received no compensation from Interhandel except a monthly stipend of \$2,000 which was expressly understood to be for "special interim services". (X-137, X-151, X-165) The first payment was made on October 25, 1960. (X-165) This retainer was paid for each month from June, 1960 through December, 1961. (J.A. 384; X-435 thru 465) When plaintiff reminded Dr. Schaefer of his promise to pay him 5% of the proceeds of settlement for conceiving and implementing the Wilson trusteeship, (X-263) Dr. Schaefer denied the existence of any such promise.

SUMMARY OF ARGUMENT

The evidence, both direct and circumstantial, establishes that Interhandel promised to pay plaintiff 5% out of the fund ultimately recovered if plaintiff could obtain the services of Charles E. Wilson to act as its trustee to negotiate for its return. The direct evidence is the testimony of plaintiff and the statement of the head of Interhandel, Dr. Alfred Schaefer, that promises had been made in Zurich to compensate plaintiff. The circumstantial evidence is: (1) the utter improbability that defendant would have asked the plaintiff, and that the plaintiff would have agreed, to devote all his time, effort and expense to the project without an agreement for compensation when he had always obtained agreements for handsome compensation in the past for negotiations for the disposition of GAF, especially when Dr. Schaefer and plaintiff were strangers to each other; (2) the high value that Dr. Schaefer put upon the acceptance of Mr. Wilson, which Dr. Schaefer considered tantamount to success, and which was in itself most valuable as demonstrated by a jump in value of Interhandel

stock on the Zurich Bourse of some 55 million dollars upon the announcement of Mr. Wilson's acceptance of the trusteeship; (3) the reasonableness of such a contingent fee; and (4) the secrecy of all the negotiations, pointing to the probability of an oral and secret agreement.

Accordingly, the trial court's finding of no express agreement is contrary to the vast weight of the evidence.

The plaintiff conceived of, and perfected, the trusteeship and brought about the conditions which made possible carrying it out. The result was the recovery of defendant's very valuable property. Plaintiff's services were performed at defendant's request and he should be compensated. Although the trial court found that the services were performed by plaintiff at defendant's request, it did not find that this plan and these efforts contributed to a result very satisfactory to the defendant. To deny the relationship between plaintiff's effort and the result is to disregard the confusion and despair which existed when plaintiff went to work and the prompt results which followed so quickly on the implementation of his plan. The results occurred during the existence of the trusteeship which he brought about and must be attributed to it. The breach of the contract by Dr. Schaefer did not contribute to the favorable result and cannot be permitted to deprive plaintiff of the fruits of his efforts.

The plaintiff should, therefore, be awarded either the express amount promised or the reasonable value of his services, which should be measured by the results achieved and thus be a fair proportion of the fund. Whether the agreed amount or the fair measure of his services, 5% of the fund that defendant recovered or could have recovered if the trusteeship had run its course, would be reasonable. The trial court erred in disregarding the proof of the value of plaintiff's services which were fully established by much competent evidence.

If the trial court, nevertheless, wanted expert testimony as to the value of plaintiff's services, then the interests of

justice dictated that the case be held open to enable plaintiff to present such testimony which he offered to do.

ARGUMENT

I

PLAINTIFF IS ENTITLED TO COMPENSATION BY INTER-HANDEL UPON TWO CONCURRENT BASES - THAT A PROMISE OF COMPENSATION WAS MADE TO HIM AND THAT HE RENDERED VALUABLE SERVICES TO INTER-HANDEL AT ITS REQUEST IN HELPING TO CREATE A FUND FOR ITS BENEFIT FROM WHICH HE SHOULD BE PAID.

- A. The District Court's Finding That No Express Promise of Compensation Was Made to Plaintiff is Without Substantial Support in the Record and Should be Set Aside.**

The District Court's finding that no express promise of compensation was made to plaintiff by Dr. Schaefer has no substantial basis in the trial record. To be sure, Dr. Schaefer did deny ever making a promise to compensate plaintiff in a particular manner and in a specific amount (J.A. 1177-78) but the record contains little, if any, other support for this finding. On the contrary, there was ample direct and circumstantial evidence presented by plaintiff to prove such a promise.

While Rule 52(a) of the Federal Rules of Civil Procedure requires the appellant to carry a rather heavy burden in seeking to overturn a trial court's findings of fact, the standard is not insurmountable. The Rule provides, in part, that "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses" This has been interpreted to mean that the reviewing court must determine whether the choice made by the trier of facts "was a permissible choice under the evidence". *Socash v. Addison Crane Company*, 120 U.S. App. D.C. 308, 309, 346 F.2d 420, 421 (1965) To the same effect is a recent opinion of the Fifth Circuit, only

there the Court stated the requirement in terms of what must be established by the appellant in order to prevail on appeal. The Fifth Circuit declared that findings should not be disturbed on appeal unless "on review of the entire evidence" the reviewing court is "left with the definite and firm conviction that a mistake has been made". *B's Co. v. B.P. Barber & Assoc. Inc.*, 391 F.2d 130, 131 (5th Cir. 1968). Plaintiff submits that a review of the entire record in this case will leave this Court with just such a conviction.

B. There is Ample Evidence in the Record that Defendant Expressly Promised to Pay Five Per Cent of the Proceeds of Settlement to Plaintiff.

1. The Direct Testimony of the Plaintiff

Plaintiff testified that when he met with Dr. Schaefer on October 26, 1959 and outlined his plan for recovering Interhandel's property, he was met with an enthusiastic response and urged to take all possible steps to obtain the consent of Charles E. Wilson to act as trustee. Naturally the subject of compensation for plaintiff was brought up and Dr. Schaefer was informed of plaintiff's earlier discussions with Dr. Sturzenegger about payment. A figure of 5% of the recovery for obtaining the services of Mr. Wilson was discussed and a promise was made to the plaintiff that if he could persuade Mr. Wilson to accept the proffered trusteeship, such payment would be made to plaintiff out of the proceeds of settlement. The promise thus made by Dr. Schaefer was for a unilateral contract which became binding when the requested performance was rendered. 1 Williston, *Contracts* § 13 (Third Ed. 1957)

2. The Probability of Such Discussions with Dr. Schaefer and the Reasonableness of the Amount are Corroborated by Plaintiff's Past Relationship with the GAF Matter

In the years following World War II, plaintiff was retained by various American companies to assist them in separate efforts to work out an agreement with Interhandel to purchase its interest in GAF following divesting of its stock. In the late 1940's he served as the "special representative" of Remington Rand Corporation to advise, negotiate and help bring about the recovery and sale of this property. (J.A. 122) Subsequently, in 1952 he was employed by Shields & Co., investment brokers, who promised him the sum of \$900,000 as a fee for finding and negotiating successfully the purchase of GAF on behalf of Shields or its nominees, with additional ancillary compensation. (J.A. 126; 421-23; X 3, 5) This fee, approximating 3% was predicated upon a purchase price of \$34,000,000. (JA. 423; X 2) From 1953 through 1956 he was retained as a consultant by W. R. Grace & Co. by whom he was paid \$75,000 per annum (J.A. 723-24; X 7) and was given a stock option-incentive agreement whereby he would receive \$175,000 cash plus an option to buy 10% of the stock of GAF if he were successful in arranging a sale of Interhandel's interest to Grace. (J.A. 136, 434; X 8) Finally, in 1958, he received \$5,000 from Food Machinery and Chemical Corporation for preparing and submitting a report on the feasibility of continuing its efforts to acquire GAF. (J.A. 151-52, 157, 458; X 19)

In the meantime, General Dynamics Corporation had offered plaintiff \$300,000 plus an option to buy a large block of stock at 50% of cost (X 13) and National Lead Company offered plaintiff \$30,000 cash, plus a monthly stipend and a stock option to acquire a large block of stock at cost. (X 16) Plaintiff rejected both of these offers because he did not have the requisite assurance from management that its recommendations would be followed. (J.A. 147, 150)

From the foregoing, it is evident that plaintiff always insisted upon having an agreement for his own substantial compensation before undertaking an effort to assist a company contemplating the purchase of GAF. Because of the time, effort and high stakes involved, it was perfectly reasonable that the measure of his compensation should be agreed in advance.

When he was first advised by Dr. Sturzenegger in 1958 that Interhandel had changed its policy and would thereafter work for the direct recovery of its property and at the time he outlined his plan for a trusteeship, his own compensation was an important consideration. Not only did plaintiff have a large family (J.A. 160, 1184) but he also realized that by working for the Swiss in their renewed effort to secure the return of GAF, he was working against his own pecuniary interest. To the extent that he was successful and the property was returned, there would be no more efforts to "Americanize" GAF whereby the Swiss would sell their interest to an American purchaser in the belief that the United States government would then be more amenable to a termination of the seizure. This would also serve to render worthless his expertise in connection with the GAF matter. Significantly, Dr. Sturzenegger did not deny that the matter of compensation was discussed at this time. (J.A. 1374)

It is, therefore, difficult to believe Dr. Schaefer's testimony that plaintiff told him that he was not interested in compensation for his services on behalf of the Swiss. (J.A. 1177-78, 1184) It would be ironic if plaintiff insisted upon receiving compensation from his old friend Dr. Sturzenegger and yet did not ask the same from Dr. Schaefer whom he had never before met. Indeed, in order to protect himself it would seem that Dr. Schaefer, a lawyer by training (J.A. 1040) and an experienced and successful businessman and banker, would have insisted upon a definite agreement for compensation. Nowhere in plaintiff's past history is there any suggestion that plaintiff would perform such services

for mere love of the Swiss or for the honor of his father. Dr. Schaefer's statements to this effect are incredible as is his claim that he did not know of plaintiff prior to their meeting on October 26, 1959. (J.A. 1034) Documentary evidence was presented at trial to show that Interhandel's executive committee, of which Dr. Schaefer was a member, was advised of plaintiff's plan and efforts to secure the Wilson trusteeship (X 35, 37) and if Dr. Schaefer knew of this, he no doubt made it his business to ascertain plaintiff's background, including his representation of various large American corporations.

3. The Evidence Demonstrates that Dr. Schaefer Agreed that Plaintiff Was to be Paid out of the Recovery by the Trustee

In addition to the statements attributed to Dr. Schaefer and previously set forth in sub-section 1, *supra*, the record contains statements either made by Dr. Schaefer in writing or attributed to him by persons other than the plaintiff. A letter written by Dr. Schaefer to the plaintiff under date of August 30, 1960, designated Plaintiff's Exhibit No. 70, made reference to defendant's agreement in both Zurich and Paris "to hold at your disposal certain sums as compensation for the time you spend in this connection". (X 151) This can only refer to compensation for services of obtaining the trusteeship since other correspondence makes clear that no promise had been made for any compensation for services to the trustee. Compensation for services to the trustee was first mentioned in Plaintiff's Exhibit No. 64, a letter dated August 1, 1960, which he wrote to the trustee requesting that arrangements be made for the payment of a certain sum to him for interim services after June 1, 1960. (X 137) The whole context of these letters shows that the reference in Plaintiff's Exhibit No. 70 could only have been for the services rendered prior to Mr. Wilson's acceptance of the trusteeship.

During the Paris meeting on April 30, 1960, Dr. Schaefer referred to plaintiff as "our man" and advised Mr. Wilson and Mr. Spofford, his attorney, that plaintiff represented them. (J.A. 664, 735, 1267) Dr. Schaefer complimented the plaintiff and declared that plaintiff would be "well taken care of" for "the job you have done". (J.A. 739-40, 975)

Plaintiff has at all times emphasized the fact that his compensation was to be paid out of the proceeds of the settlement. To plaintiff, this was the best security that he could obtain for his own compensation since it was not possible for him to obtain an agreement for compensation in writing. See sub-section 6 of this Part, *infra*. Since the settlement would, of necessity, take place in the United States, and since the proposed trustee was well-known to plaintiff as a man of integrity and, in fact, was a personal friend, plaintiff was willing to look to the trustee for his eventual payment. (X 381) In all of plaintiff's dealings with Dr. Schaefer on the trusteeship matter, plaintiff insisted that the trustee have broad power to settle all claims—including his own—out of the proceeds of settlement. (J.A. 200-201; X 42) Accordingly, it is significant that from the very outset Dr. Schaefer agreed to give the trustee this power. The means of payment, i.e., plaintiff's compensation to be paid out of the fund, is set forth in plaintiff's October 26, 1959 memorandum. (X 42) Dr. Schaefer's acceptance thereof is contained in his letter to plaintiff, dated November 4, 1959, (X 46), see also J.A. 1037) in the trust powers themselves, (X 106) which were personally approved by Dr. Schaefer and which closely conform to the October 26, 1959 memorandum.

Moreover, the agreement for payment of plaintiff's compensation, necessarily long deferred, and possibly never to be received since it was contingent upon the success of efforts to obtain a recovery for the Swiss, points to the reasonableness of a five per cent (5%) commission. Plaintiff's willingness in October, 1959, and April, 1960, to work for such a deferred compensation was dictated by the circumstance

that Interhandel had no means by which they could pay plaintiff the type of compensation which his services merited. Interhandel's interest in GAF, the vested property, was by far its largest asset (J.A. 90, 1024) and Interhandel had not paid any dividends to its shareholders since GAF was vested.

4. Various Other Circumstances Corroborate Plaintiff's Testimony that a Promise of Compensation for Obtaining Charles E. Wilson's Services was made in October, 1959.

Immediately after the meeting of October 26, 1959, Dr. Schaefer's actions indicated that he had bought the plan and services of plaintiff and plaintiff's actions corroborated this understanding. The record demonstrated that Dr. Schaefer expected plaintiff to spend his full time in his efforts to obtain Charles E. Wilson's services. The flood of correspondence, the transatlantic phone calls, the cables, the visits of Dr. Ulrich Wehrli to New York and the summons of plaintiff to Zurich, all show that an agreement had been sealed and both parties accepted the consequences of it. Surely Dr. Schaefer would not have felt any right to make such demands on plaintiff's time, effort and knowledge unless he had promised handsome compensation. Nor would plaintiff have entered so completely and enthusiastically into the effort unless he believed that the success of his efforts would be rewarded in accordance with an actual agreement. All of plaintiff's efforts from October, 1959 to the end of May, 1960, were spent exclusively on this project.

Neither party ever suggested any other means of paying for this work except that to which the plaintiff testified, i.e., that he was to receive 5% of the avails of settlement. His expenses were reimbursed for this period. (J.A. 269; X 114, 119, X120) but he received no payment for services on an interim basis or otherwise. (J.A. 383; X-114, 263) Interim payments were made for the period beginning June 1, 1960 for his services from that date, but even these were not made until

October of that year when plaintiff pointed out that some means of support was necessary if he was to continue to devote his full time to assisting the trustee and his counsel, (X 137, 165) This circumstance strongly supports the credibility of plaintiff's testimony and disproves that of Dr. Schaefer.

5. The Promise of Five Per Cent Commission is Entirely Credible.

The affairs of Interhandel in its attempt to obtain the return of GAF were at a low ebb in October of 1959. Dr. Schaefer testified that the prospects of success were very bad indeed. There seemed no prospect of an end to the litigation which at that time had continued for some eleven years. Every other avenue that had been attempted, proved a blind alley. GAF itself was suffering a decline in its competitive business position with other companies producing similar products. (Pl. Ex. No. 105, pp. 33-34). The company was being operated by the government in a more or less custodial capacity and was unable to make business decisions that would have enabled it to compete more adequately. (J.A. 742-43, 1032, 1288) Mergers with other companies were impossible. (J.A. 1032) Its ability to raise capital was restricted and management was not well qualified. (J.A. 306, 743, 745, 1032) Consequently, the Swiss saw this valuable property which once had been a giant in its own field deteriorating (J.A. 742-43, 1032; X 304) without any prospect of being able to rescue it from its declining position (J.A. 742-43, 1032)

If some plan could be devised that promised success, 5% would have been a very modest proportion of the recovery. In the despairing circumstance in which Interhandel found itself it must have seemed to Dr. Schaefer to cost very little to promise 5% which would only be payable in the event of success and after the return of the property or its counter-value.

No doubt the plan to obtain so distinguished a man as Charles E. Wilson to act as Interhandel's plenipotentiary

meant to the Swiss the difference between prompt success and lingering failure. Whether on the representation of the plaintiff or on his own evaluation of the situation, Dr. Schaefer evidently expected that Mr. Wilson could resolve the controversy with the United States government quickly and successfully. The Swiss seemed to believe that his entree into the Eisenhower administration would afford them an immediate hearing on the merits of their case by those in ultimate authority in the United States government and that when this was obtained, return of their property would be almost automatic.

Dr. Schaefer's confidence in this result is demonstrated in many ways. On behalf of Interhandel he was willing to do anything that Mr. Schmitz suggested to effect the desired result. Whatever papers were drawn up by plaintiff were adopted and signed without cavil by Interhandel's board. (J.A. 219-21, 622-23, 625-27, 1040-41; X 64, X 70) When certain GAF stockholders sought certain action by Interhandel they were squelched in a letter written by the Swiss upon plaintiff's demand. (J.A. 239-41, 1045-46; X 95) and signed by Dr. Schaefer after revision by the plaintiff. (X 95) In order not to disrupt the obtaining of the all-important consent of Mr. Wilson to act, plaintiff was asked by the Swiss to draft the letter to be sent to Mr. Wilson for Dr. Schaefer's signature (J.A. 244-45, 1045-46; X 95, 112)

Within weeks after the trustee had entered on his duties Dr. Schaefer was demanding to know what results had been obtained, (X 146, 163) evidently expecting that success would come overnight. Within less than a year he insisted on intervening personally despite the change of administration which necessarily interrupted the trustee's activities. His expectations of immediate success on this front are in sharp contrast to the patience shown during the long drawn out litigation. The point is that, as far as promises to the plaintiff are concerned, it demonstrated the high value placed on the trusteeship and, therefore, the reasonableness of the promise of 5% to obtain it.

Furthermore, this keen Swiss banker was well aware of the impact that the announcement of the trusteeship would have on the value of Interhandel's shares on the Zurich Bourse. Of course, the announcement did have a dynamic effect, and the value of Interhandel stock jumped by over 55 million dollars on the announcement on June 6, 1960. (J.A. 1201-1206) This had the combined merit of increasing the value of the bank's holdings and those of its clients, since they were actively trading in this stock, (J.A. 1196-99, 1216, 1393-94) but also relieved the pressure from the stockholders which had been making Schaefer's position so difficult. (J.A. 263-64; X 163) The promise of 5% to plaintiff for this result becomes quite reasonable in this context.

An analogy can be drawn between the plaintiff's services in the present case and the services of a real estate broker who arranged for the sale of a valuable property. In cases involving real estate brokers the Courts inevitably will enforce a contract providing the broker with a fixed commission regardless of the amount involved so long as he had tendered performance under his contract. *Palmer v. Gleason*, 154 Colo. 145, 389 P.2d 90 (1964); *Nelson v. Reinhart*, 47 Nev. 246, 219 Pac. 554 (1923); 12 C.J.S. *Brokers*, §112 (1938 ed.) In this context it is appropriate to consider the language of the Supreme Court of Wisconsin in a suit by a broker for the recovery of his commission:

"However, a real estate broker's commission is not based upon the amount of services but on the result of the services. A broker may spend much time and money trying to sell a piece of property and fail entirely, while again he may succeed in making a sale at the expenditure of very little time or money. To hold that Ellis is not entitled to the amount of his claim is to disregard the testimony as to the value of such services." *In re Kayser's Est.*, 190 Wis. 189, 208 N.W. 895, 897 (1926)

Plaintiff and Dr. Schaefer were dealing with each other at arm's length on October 26, 1959, and under the facts

of this case there was no possibility of overreaching. As plaintiff was an independent contractor in the strictest legal sense, see 35 Am. Jur. *Master & Servant*, § 5, 14 (1941 ed.) and each party having something of value to offer the other, there could be no basis for any claim of overreaching by either party. Consequently, the Court should not be concerned about the value which the parties mutually placed upon plaintiff's services. See 17 Am. Jur. 2d *Contracts* § 345 (1964 ed.)

The Swiss in due course would place a value upon the trusteeship which, in turn, of necessity, reflected upon the value of plaintiff's services. In the Resolutions of the Executive Committee of Interhandel's Board of Directors, the Swiss declared their conviction that at the time of the Paris meeting the trusteeship represented not only the best, but perhaps the only, means by which they could effect a prompt and satisfactory settlement of the GAF controversy. (X 103) The Resolution emphasized not only Mr. Wilson's unexcelled standing with government officials, but also "his exceptionally sound judgment especially in affairs of Finance and Industry". (Id.) For the resolution of the GAF matter encompassed more than merely settling a law suit. It involved the settlement of a difficult international dispute as well as the disposition of a valuable industrial property, with a myriad of problems of financing, underwriting and sale. This aspect of Mr. Wilson's total personality was almost as important as his ability to represent the Swiss in the highest echelons of the American government. (X 376) Mr. Wilson's reputation in the business and financial community did not escape Dr. Schaefer, nor did his connections with the Morgan Guaranty Trust Company.

Moreover, at the Paris meeting, the Swiss indicated that Mr. Wilson was to have a free hand in resolving the matter, including the settlement of all claims against their interest in GAF. (J.A. 259-60, 1051-52) The Swiss specifically declared that they were willing to pay \$20,000,000 to \$30,000,000 out of the settlement proceeds to satisfy all claims

against them (J.A. 258, 734-35) in order to secure the return of their investment. Noteworthy is the fact that neither Dr. Wehrli nor Dr. Schaefer denied that such a statement was made, nor did they indicate the existence of any possible claims against GAF—except those of plaintiff and his father.

6. An Oral Agreement was Necessary and Appropriate

Because of the sensitive nature of the proposed Wilson trusteeship, the agreement for the compensation of plaintiff was not reduced to writing. This was at the special insistence of Dr. Schaefer who declared that the secrecy of the transaction forbade a written document. (J.A. 203, 387; X-41, 46, 54) Indeed, in matters such as this, a written agreement would have been quite unusual for confidentiality is a requisite to success. See, e.g., *Hardy-Latham v. Wellons*, 415 F.2d 674 (4th Cir. 1968); *Baldwin v. Grymes*, 232 Md. 470, 194 A.2d 285, 287 (1963); T.A. Wise, "Lazard: In Trinity There Is Strength", *Fortune*, p. 101 (August, 1968)

Dr. Schaefer impressed upon plaintiff the hypersensitive nature of these proceedings. News of the effort to establish the trusteeship would activate the stock market and possibly touch off wild speculation. (J.A. 1024, 1140-41) Rejection of the proposed trusteeship, of course, would drive down the price of Interhandel shares, thus causing even greater stockholder dissatisfaction with management. (J.A. 197, 203, 263; X-41) Moreover, rejection of the proffered trusteeship by Mr. Wilson would make it difficult for the Swiss to secure the services of any other distinguished American to aid their cause and certainly would further cripple whatever bargaining position they then had in connection with possible settlement of the controversy. Indicative of the extreme importance of the matter was the requirement that the participants at the Paris meeting discuss the matter with no one, not even Interhandel's trial counsel, John J. Wilson. (J.A. 263, 742, 1057, 1269; X-117, 122, 125)

Nor could there be any mention of plaintiff or of his claim in any of the trusteeship documents. The inclusion of plaintiff's name in any document that might have to be disclosed to the United States government or to stockholders might well have a prejudicial effect in view of the connection of Hermann A. Schmitz and Dietrich A. Schmitz to the GAF controversy. The former was the financial head of I. G. Farben, who had been accused after World War II of war crimes, although later found not guilty at Nuremberg, (J.A. 198, 438) and the latter was alleged by the government to be Farben's agent in the United States. The wisdom of maintaining strict secrecy was pointed up several years later when Drew Pearson made sensational charges against plaintiff when he sought to intervene in Civil Action No. 4360-48. (J.A. 76) In recognition of this fact, the trustee, shortly after his acceptance of the trust powers, instructed plaintiff not to visit Washington or to communicate with any officials of the United States government about the GAF matter. (J.A. 290-91; X 433)

Moreover, Swiss bankers, such as Dr. Schaefer, are notorious for the secrecy of their transactions. There was no reason to make this an exception. Plaintiff had been brought up in an atmosphere of trusting the Swiss owners of Interhandel. They had trusted his father completely and his father and he had reciprocated that trust with Dr. Sturzenegger. No reason suggested itself to plaintiff why this trust should not continue despite the new management of Interhandel. Plaintiff realized that it would be inappropriate to state arrangements for his compensation in the trust powers to Mr. Wilson since they must be given to the Department of Justice, but these powers (X 107-109) spoke of the authorization of the trustee to settle all claims, by which plaintiff clearly meant his own. (J.A. 202-203, 386) Upon the execution of the trust powers the authority to compensate him passed to the trustee whom he trusted implicitly, knowing full well that his claim would be met by Charles E. Wilson before any distribution of the balance was made

(J.A. 79, 392, 1017) Therefore, the secrecy does not in effect suggest lack of agreement, but rather tends to corroborate the existence of one.

**C. The Trial Court Found that Plaintiff Performed
Valuable Services at the Request
of the Defendant**

The trial court has found that plaintiff performed services for the defendant at its request, both before and after the acceptance by Charles E. Wilson of the trusteeship. Thus, whether or not plaintiff proved an express promise by defendant to pay an agreed amount, there was certainly an implied agreement and obligation to compensate plaintiff for his services. There can, of course, be no question but that the defendant asked plaintiff as early as the conference with Dr. Sturzenegger in December of 1958 to devote his time to a trusteeship project. These requests for services were reaffirmed by Dr. Schaefer on his first meeting with the plaintiff on October 26, 1959, and thereafter the record shows a constant and continuing urging of the plaintiff to work on defendant's behalf. No compensation whatever except for the reimbursement of expenses was made for the period up to June 1, 1960, and the only compensation after that time was a minimal amount on an interim basis. One is obliged to pay for any services rendered at his request and the assumption is that they are valuable, so that whether or not there was an express promise to pay plaintiff, there was certainly an implied one. Of course, any services performed at the request of an individual should be compensated for but the services here were of a high order and had an extremely valuable result.

It is not too much to say that the concept devised by the plaintiff and his implementation of that plan made possible the rapid solution of an apparently insoluble dilemma. Plaintiff provided the key that unlocked the heavily barred door which, for many years, stood in the way of a solution to the GAF controversy.

The trial court was not convinced that either plaintiff or the trustee and his counsel contributed to the settlement of

the controversy between Interhandel and the United States government. However, this finding flies in the face of the evidence. It is easy to look back after a result has been achieved and conclude that it was easy, automatic or predestined. Actually, the situation appeared quite different at the time that plaintiff proposed the trusteeship plan that was adopted so enthusiastically and exploited so successfully. Dr. Schaefer testified to the gloom of the situation in the fall of 1959.

“(Mr. O’Donoghue)

Q. What about the status of the lawsuit at that time [1958-59]?

(Dr. Schaefer)

A. The lawsuit went on since about ten years. The decision for the Swiss was that we had to give—had to prove that this was not German tainted.

Q. What was the progress of the lawsuit? Was it anywhere near termination?

A. Not at all. We had the impressions that it would probably go on for years.

Q. That is what you were told by your counsel here in Washington?

A. By our counsel and by our own inquiries and especially by the situation we found regarding the lawsuit and the procedure.”

* * * * *

“Q. What was the situation as you found it as far as General Aniline and Film was concerned about the health and activity of that company?

A. We began to be worried because we saw that it wasn’t really prosperous, that it was for years in the hands of Government and that it wasn’t following the same pattern as other successful American companies.

Q. That it was forbidden to merge with other companies?

A. It was forbidden to merge and we had no direct influence at all over General Aniline.

Q. And I suppose it could not have, well, issued stock or bonds or anything of that kind?

A. No.

Q. And you regarded that as hampering its competitive situation?

A. Yes.

Q. Especially in regard to other dye and photographic companies, Kodak, for example?

A. Yes.

Q. So, the prospect was, when you took over that, this whole matter would continue for years and years and years and there was no prospect of a prompt settlement, was there?

A. That is true. We tried repeatedly and all our trying was not successful."

(J.A. 1030-32)

The discovery process was no way near over. If the case continued to follow its usual pattern rulings on threshold matters would be appealed to this court and even to the Supreme Court. A trial on the merits might never be reached or if it were, it would be years in the future. The United States was confident that it would win a trial on the merits (J.A. 498, 502) but whichever side was successful, there could be no doubt that an appeal would be taken. The chances of ultimate success for Interhandel even in the very remote future, were obscure at best.

It is, therefore, inconceivable that there was no relationship between plaintiff's conceiving of the trusteeship, suggesting the best qualified American imaginable for the position, obtaining his acceptance thereof, and aiding the trustee and his counsel in their vigorous prosecution of the Swiss cause in the high echelons of government, on the one hand, and the prompt settlement of the case, on the other hand. It must be apparent that the ultimate solution could not have been achieved without the trusteeship. In October, 1959, Dr. Schaefer had no entree to the councils of the great in this country nor was there any interest in the Department of

Justice or elsewhere to do anything about the return suit except what had been done for the last twelve years—to battle the Swiss at every turn, (J.A. 107-108, 1030) whether in the law suit prosecuted in this jurisdiction, the World Court or elsewhere. The implementation of plaintiff's design resulted in a prompt and complete about-face in the attitude of the United States government and a willingness to work out a mutually acceptable settlement. Neither the Swiss nor the trial counsel ever were able to establish such rapport with the United States government. Mr. Charles Wilson, with his vast experience in getting things done in government, knew where to put in the appropriate word and how to get a comprehending ear.

The trustee's counsel was, and is, one of the most able lawyers in the United States, (J.A. 1260-61) with years of experience and competence in the most difficult aspects of corporate finances and organization. It was at once apparent to him that one reason why Interhandel had never received sympathetic consideration was that there was no comprehensive statement of its case. (J.A. 750-51, 1280) He appreciated that a factual brief would be the most powerful argument for his client's position. He undertook, with the aid of the plaintiff, to state the case, in a simple straightforward and complete manner, that would persuade any fair-minded government official that Interhandel was right and the United States government was wrong. This so-called Trustee's Memorandum (Pl. Ex. No. 105) was delivered to the Department of Justice in late April, 1961, and its impact was one of the most important factors paving the way for settlement. (X 217, 309) No settlement with the Kennedy Administration would have been possible without this thorough and careful groundwork laid by the trustee and his counsel.

Without the proper groundwork no settlement was possible; with it any settlement was easy. Dr. Schaefer could not have walked into the Department of Justice in the Fall of 1959 and effected a settlement of the controversy as he did in late October, 1961. The difference between those

two dates was not a mere lapse of time, but the putting into effect of the brilliant concept that plaintiff had evolved single handedly. The trustee and his counsel skillfully moulded the thinking of the Justice Department officials. Dr. Schaefer capitalized upon their endeavors and carried off a settlement, albeit a less favorable one than they could have obtained.

It is contrary to fact and justice to conclude, as the trial court did, that "the record is devoid of any evidence from which a determination can be made of the part which their efforts contributed to the ultimate result which was accomplished." (J.A. 39)

II

PLAINTIFF IS ENTITLED TO A SUBSTANTIAL RECOVERY BY REASON OF EITHER THE MEASURE CONTAINED IN THE EXPRESS PROMISE OF COMPENSATION OR THE BENEFIT CONFERRED UPON INTERHANDEL BY HIS SERVICES.

A. The Measure of Damages Under the Express Contract is Five Per Cent of Defendant's Recovery

The facts and circumstances set forth in Section B of Part I, *supra*, demonstrate that, contrary to the finding of the trial court, there was an express promise by Interhandel to plaintiff to pay him five per cent (5%) of the amount that it recovered for his services in conceiving and establishing the trusteeship. The only question then is what figure this percentage should be applied to. The net amount actually received by the defendant was approximately \$120,000,000 (J.A. 111, 1408) but this was after subtracting approximately \$25,000,000 from the defendant's share of the net proceeds of the sale of the GAF stock. This amount represented the payment of taxes and various other obligations to the government, which were in the nature of charges against defendant's interest. These sums should not be subtracted in computing the plaintiff's share any more than the expenses of litigation are subtracted from a judgment before computing an attorney's contingent fee. Therefore,

the 5% commission should be based at least on \$145,000,000. However, even this would be unfair and inadequate because the record makes clear that but for the unlawful intermeddling of Dr. Schaefer in the negotiations with the government, the trustee could have obtained a settlement whereby at least 75% of the proceeds would have gone to the Swiss. (J.A. 321-22, 746-47) In those circumstances Interhandel could have recovered 75% of \$340,000,000, or \$255,000,000. Therefore, compensation of plaintiff should have been either \$6,050,000, \$8,500,000 or \$12,750,000, depending on which amount the court believes the compensation should be based.

B. The Measure of Damages Under Implied Contract is the Value of His Services Considered in Relation to the Result Obtained.

1. Plaintiff is entitled to have his compensation measured in proportion to the results achieved

If this court should hold that plaintiff failed to prove an express contract, plaintiff nonetheless is entitled to be compensated on the basis of the implied contract which the trial court found to exist (J.A. 48) even though denying a recovery. The trial court based its decision upon a determination that while plaintiff's services were performed at defendant's request, there was no proof of the value of such services. This finding constitutes an abandonment by the trial court of its duty to do justice between the parties.

It is obvious, and the court so found, that the services performed by plaintiff were of a unique character and rendered in connection with a unique and unprecedented situation. But if there are no precise precedents for determining the value of plaintiff's services, there are many bases which the court could, and should, have seized in order to do justice between the parties. Plaintiff is not disentitled to receive reasonable compensation even if the trial court's finding that there was no express agreement is accepted and even if no expert testimony was presented to establish a usual and customary commission for plaintiff's unique ser-

vices. See *Hill v. Capps*, 248 Miss. 601, 160 So.2d 186 (1964) and *Bangle v. Holland Realty Inv. Co.*, 80 Nev. 331, 393 P.2d 138 (1964); 12 Am. Jur.2d, *Brokers*, § 161 (1964). The present situation of the plaintiff is somewhat like that of a lawyer, a broker or a finder, the value of whose services are not measurable simply by the time spent but rather by the results achieved. The efforts of the plaintiff led to the prompt receipt by the defendant of a very large sum of money, the recovery of which was at best doubtful, and the time of recovery of which would, in any event, have been long delayed. The plaintiff in effect helped to create the fund and a fair porportion of the fund itself should be the measure of the compensation.

2. Plaintiff is Entitled to Have his Compensation Measured by a Standard Which Reflects the Unjust Enrichment of the Defendant

If the defendant is allowed to retain the entire fund that it received so largely as a result of plaintiff's efforts, it would constitute unjust enrichment of the corporation. In evaluating plaintiff's claim for compensation the Court should consider the following language from Professor Corbin's treatise on contracts:

"The availability of the remedy of restitution is not restricted to cases in which the defendant has been guilty of a breach of contract . . . Unjust enrichment, therefore, may be a sufficient reason for granting the quasi-contractual remedy of restitution, even though the granting of that remedy is not restricted to cases of unjust enrichment. If this is true in cases where the defendant has committed no wrongful act, it shall be true, *a fortiori*, if the defendant has been guilty of a breach of contract or other wrong."

5 Corbin, *Contracts*, §1107 (1964 ed.)

That the unjust enrichment theory applies in the District of Columbia is made clear in *Rosenkoff v. Finkelstein*, 90 U.S. App. D.C. 263, 195 F.2d 203 (1952) and in *Roebeling*

v. Dillon, 109 U.S. App. D.C. 402, 288 F.2d 386, *cert. denied*, 366 U.S. 918 (1961).

On a claim of unjust enrichment the claimant must, of course, not only show that the other party has received a benefit but also that it has been at the expense of the claimant. *Lawrence Warehouse Co. v. Twohig*, 224 F.2d 493 (8th Cir. 1955); *Herrman v. Gleason*, 126 F.2d 936 (6th Cir. 1942) The evidence presented in this case meets both of the criteria for a recovery on a theory of unjust enrichment. The benefit to the defendant need not be purely and simply a monetary benefit but it more properly can be described as an "advantage". The Supreme Court of Pennsylvania pointed this out in *Meehan v. Cheltenham Township*, 410 Pa. 446, 189 A.2d 593 (1963) wherein it was stated that the standard by which to measure a recovery under the doctrine of unjust enrichment was not solely plaintiff's expenditure of time, effort or materials. Rather, the court held, a recovery should take into account, in addition to these stated factors, the benefit which defendant received as a result of the claimant's services. To the same effect is *Lawrence Warehouse Co. v. Twohig*, *supra*, 224 F.2d at 498, and *Herrman v. Gleason*, 126 F.2d 936 (6th Cir. 1942).

3. Difficulty in Computing Plaintiff's Damages in this Case has been Caused by Defendant's Wrongful Conduct

The testimony of the plaintiff and of the trustee established that the plaintiff's problems in securing compensation for his services flow from defendant's violation of the trusteeship agreement. Had the trustee been allowed to continue his endeavor to secure a most favorable settlement for the Swiss in accordance with the stated irrevocable provisions of the powers, plaintiff would have received his compensation from the trustee out of the proceeds of the settlement and the instant suit never would have been filed. (See J.A. 77) The authorities are unanimous that a defendant whose wrongful conduct has rendered difficult the ascer-

tainment of the precise damages suffered by the plaintiff is not entitled to complain that these damages cannot be measured with the same exactness and precision as would otherwise be possible. In *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, at 264-65 (1946), the Supreme Court declared:

"[T]he jury may make a just and reasonable estimate of the damage based on relevant data, and render its verdict accordingly. In such circumstances "juries are allowed to act on probably and inferential as well as upon direct and positive proof." [citing cases] Any other rule would enable the wrongdoer to profit by his wrongdoing at the expense of his victim. It would be an inducement to make wrongdoing so effective and complete in every case as to preclude any recovery, by rendering the measure of damages uncertain. Failure to apply it would mean that the more grievous the wrong done, the less likelihood there would be of a recovery.

"The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risk of the uncertainty which his own wrong has created"

See *Hartley & Parker, Inc. v. Florida Beverage Comm.*, 307 F.2d 916 (5th Cir. 1962); *Stepovich v. Kupoff*, 261 F.2d 693 (9th Cir. 1958). The principle also finds expression in the following statement by Judge Vann speaking for the Court in *Mooney v. Byrne*, 163 N.Y. 86, 57 N.E. 163, 165 (1900):

"Guided by the cardinal principle that the wrongdoer shall make nothing from his wrong, equity so moulds and applies its plastic remedies as to force from him the most complete restitution which his wrongful act will permit."

A party which has broken its contract will not be permitted to escape liability solely because of uncertainty in the amount of the damages resulting therefrom. The fact

that the full extent of the damages for the breach may be a matter of speculation is not a ground for refusing all damages.

"[I]n applying the rule against the recovery of uncertain damages, it is the uncertainty as to their nature, and not as to their measure or extent, that is meant. While the actual amount of damages from the breach of a contract may not be susceptible of exact proof, the law does not permit one whose act has resulted in loss to another to escape liability on this account. The manner of measuring the damages having been ascertained, impossibilities in proving same are not required, but only that the best evidence be adduced of which the nature of the case is capable; in other words, the degree of certainty of the proof is dependent upon the character of the proceeding. Why should greater certainty be required as to proof of the amount of damages than in respect to any other part of a case? All that can be expected in any case is that the relevant facts tending to show the extent of the damages be placed before the jury to enable it to make such an intelligent estimate of the same as the circumstances of the case will admit."

City of Kennett v. Katz Const. Co., 273 Mo. 279, 202 S.W. 558, 562 (1918). See also *General Finance Corp. v. Dillon*, 172 F.2d 924, 930 (10th Cir. 1949); *Kaiser v. Amalgamated Clothing Workers*, 169 Va. 574, 194 S.E. 727 (1938); 25 C.J.S. *Damages*, §28 (1966). Where, as in the instant case, the plaintiff has rendered substantial, unique and valuable services but the means for measuring their worth has been made difficult by defendant's conduct, all that reasonably can be asked of the plaintiff is to render the best proof of which the case is susceptible.

The authorities cited by the lower court in its Opinion to the effect that damages must be proved with reasonable certainty and specificity for the most part pertain to values of real or personal property sold or exchanged. It is submitted that while the principle is applicable to that type of case, the rule of damages cited therein is ill-suited to the case

involving the "sale" or "exchange" of advice and personal services which cannot be precisely valued in terms of dollars and cents. The Supreme Court recognized this principle in *S.E.C. v. Capital Gains Bureau*, 375 U.S. 180 (1963), and that ruling was applied by this Court in *Espallat v. Berlitz School of Languages*, 127 U.S. App. D.C. 293, 383 F.2d 220 (1967). In the latter case, the trial court entered judgment n.o.v. for defendant in a suit for breach of contract brought by an instructor against the Berlitz Schools. The trial court rested its conclusion on the stated ground that there was insufficient evidence upon which the jury could ascertain the damages sustained by the plaintiff. In reversing the trial court decision, Judge Danaher, speaking for the Court, declared that a contract suit involving personal services cannot be successfully defended merely because the damages suffered are difficult of ascertainment. The Court then quoted a portion of the Supreme Court's opinion in *Story Parchment Co. v. Patterson Parchment Paper Co.*, 282 U.S. 555, 563 (1931), as follows:

"Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his act. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which he alone is responsible for making, were otherwise."

The trial court recognized that the negotiations leading up to, and the creation of, the Wilson trusteeship were unique matters. Under these circumstances it is difficult at best and perhaps impossible for the plaintiff to place a pre-

cise monetary value upon his services in accomplishing the desires of the Swiss. Plaintiff submits that the Court, having already found that he is entitled to damages, should apply a liberal rule with respect to determining the amount of those damages. The language of the Court in *Wenzler & Ward Plumbing & Heating Co. v. Sellen*, 53 Wash. 2d 96, 330 P.2d 1068, 1070 (1958), is noteworthy.

"Therefore, when it is clearly apparent that the plaintiff has sustained actual damage from the defendant's wrong, a liberal rule is applied with respect to determining the amount of that damage. Moreover, where proof of actual damage to the plaintiff is available, uncertainty as to the exact amount thereof cannot deny to the plaintiff a right to recover any compensation at all". (Quoted with approval from 14 Cal. Jur. 2d 690, §65.)

4. *The Trial Record Contains Many Indicia of the Worth of Plaintiff's Unique and Valuable Services*

The trial court had concluded that no evidence as to the reasonable value of plaintiff's services in creating the trusteeship was adduced, but in this it was clearly in error.

From the outset, the Swiss placed a very high value on the benefit they expected to receive from the trusteeship and this value found many expressions. On the one hand, there are references in the record to the importance that the Swiss placed upon the trusteeship in terms of national honor and pride. The acceptance of the trust by Mr. Wilson was looked upon as a vindication of the Swiss and the righteousness of their case. At Paris, Dr. Schaefer pledged the honor of Switzerland and his own honor that Interhandel was free from enemy control or taint. (J.A. 254, 661, 734, 1047-48). But the best expression of the importance of the trusteeship is contained in the Resolution adopted by the Executive Committee of defendant's board of directors wherein, among other things, it is declared:

"We submit and truly believe, that, while not only being just and morally right, the return to us of our

heretofore vested property-of-record by the United States Government will do much to help clear the way towards an earliest effective implementation of a number of high policies and programs of the United States Government, and will serve the cause of peace, free private enterprise, and enhance the relations and prestige between the United States of America and all free nations of the world, . . .”
Pl. Ex. No. 47, Para. 21 (X-102).

On the other hand, the record contains several references to the economic value of the trusteeship to the Swiss. At the Paris conference, Dr. Schaefer was so anxious to obtain the services of Charles E. Wilson as trustee that he pledged \$20,000,000 to \$30,000,000 to satisfy whatever claims might be presented against the settlement fund (J.A. 258, 735) giving the trustee sole discretion to settle these matters. (J.A. 260, 1051-52) On the Zurich Bourse, the quotations for Interhandel stock rose gradually while the negotiations were under way and steeply when the acceptance of the trusteeship was publicly announced. (J.A. 1200-1201) The acceptance of the proffered trusteeship by Charles E. Wilson caused an increase of over 2,000 Swiss francs per share on the Zurich exchange, or approximately 450 American dollars per share. (J.A. 1202) This meant, since there were approximately 110,000 shares outstanding, that the value of Charles E. Wilson's acceptance of the trusteeship, as appraised in the stock market, was approximately 55 million dollars (J.A. 1203) The value of the stock maintained this level during the entire period of the active trusteeship and was still quoted at 4,900 Swiss francs in October, 1961. (J.A. 1204) It was only after the interference of Dr. Schaefer and his offer to accept only half the value of its GAF stock that the quoted value of the stock fell appreciably. (J.A. 1205) As it was, the ultimate amount received by Interhandel for its GAF stock was almost precisely the same as the price of the stock after Charles E. Wilson's acceptance of the powers. (J.A. 1203)

The right to the use of the money represented by Interhandel's share of GAF has a great value, too. Dr. Schaefer

no doubt anticipated that Charles E. Wilson would be able, by his influence, to obtain a prompt return of the GAF shares (J.A. 661, 1054; X-300) and thus not only make certain what was otherwise doubtful, but also enable the Swiss to earn many years of interest from the lending of such money. Indeed, if the value of Interhandel's share of the GAF stock is accepted as approximately \$120,000,000, the amount ultimately received, the interest on this amount for only a single year would be at least \$7,200,000, and probably much more if the high interest rates even then prevailing in Europe are taken into account.

III

**PLAINTIFF'S OFFER TO PRESENT FURTHER
EVIDENCE OF THE VALUE OF HIS SERVICES
OUGHT NOT TO HAVE BEEN REJECTED AND
THE DISTRICT COURT OUGHT TO HAVE RE-
OPENED THE CASE TO PERMIT THE PRESENTA-
TION OF SUCH EVIDENCE.**

There is a manifest injustice in the trial court's determining that services had been performed and yet refusing to award compensation to the plaintiff for these services. As shown above, plaintiff is convinced that the value of his services was fully proved and the court had all the evidence necessary to award such damages as would have fairly compensated the plaintiff for his uniquely valuable services. The trial court, however, apparently felt that expert testimony should have been presented on this point and that without it no award could be made.

Because of the uniqueness of plaintiff's services, expert testimony is not easily adduced. However, such testimony could have been obtained and the offer to obtain and present it was made to the trial court. Naturally this offer was not reduced to specifics in the tender since that would have involved the outlay of large sums to the experts for their time and research. This was not justified since the trial court might have acted favorably on plaintiff's motion for

reconsideration, or alternatively have denied, as in fact was done, the motion to reopen the judgment to present this expert testimony. An affidavit of Charles E. Wilson was submitted with the motion which stated that he, as an expert, regarded 5% of the recovery as reasonable compensation to plaintiff and that in the exercise of his powers under the trust he would have paid this amount to Robert A. Schmitz.

Plaintiff asked that a new trial be granted or that, alternatively, the judgment be opened pursuant to the provisions of Rule 59(a) of the Federal Rules of Civil Procedure to allow testimony of this kind to be presented. (J.A. 53, 59) Rule 59(a) provides, in part:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or a part of the issues . . . (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

The motion was denied. (J.A. 84-85) Had the trial court afforded the plaintiff this opportunity, it would have prevented the manifest injustice of giving the plaintiff nothing for his work and permitting the defendant to enjoy, unjustly, the substantial, tangible benefits which it received as a result of plaintiff's endeavors on its behalf. Although it may be contended that a decision under this rule is discretionary with the trial court, the refusal to act under the circumstances of this case can only be regarded as an abuse of discretion.

IV

**PLAINTIFF'S EQUITABLE LIEN HAS NOT BEEN DEFEATED
BY THE ACTIONS OF THE DEFENDANT.**

The complaint in this case asserted plaintiff's equitable lien upon the fund itself which, at the time of suit, was still retained in this jurisdiction in an amount more than sufficient to cover plaintiff's entitlement. In the course of the suit and without the knowledge of plaintiff, it was transferred in its entirety to Switzerland. There is in effect a dual basis for plaintiff's lien which is complementary and not mutually exclusive.

The allegations of plaintiff's complaint and his proof at trial place the instant suit in the classic mould of equitable lien cases, typified by *Barnes v. Alexander*, 232 U.S. 117 (1913); *Orinoco Co. v. Orinoco Iron Co.*, 54 App. D.C. 218, 296 Fed. 965, *appeal dismissed*, 265 U.S. 598 (1924), and *McCormack v. Harrah*, 60 App. D.C. 260, 51 F.2d 316 (1931), in which persons who had made significant contributions to the creation of funds were accorded liens on the theory that they should be compensated for the valuable services they had rendered. Here, as in the *Barnes* and *McCormack* cases, by virtue of express agreements with defendant Interhandel, plaintiff has received an interest in, and consequently has a charge upon, the fund in question as compensation for the services which he rendered to Interhandel. In addition, he performed valuable services which directly pertained to the creation of the fund itself, as in *Orinoco Co. v. Orinoco Iron Co.*, for which, in justice and equity, he ought to be compensated. Thus, plaintiff has not one, but two, concurrent bases on which his lien may be predicated. See 4 Pomeroy, *Equity Jurisprudence*, §§ 1233-35, 1238-39 (5th ed. 1941); McClintock, *Equity* § 118 (2nd ed. 1948).

The complaint asks that the lien be declared by the court. This is basically a method of assuring payment and, of course, plaintiff needs to prove the value of his services to determine the extent of his lien. This he has done and the court is asked to declare the lien. It is submitted that the

lien came into existence simultaneously with the creation of the fund and remains fixed until satisfied. It may not be defeated by the removal of the *res*. Plaintiff is confident that the processes of the court may not be defeated by such removal and that the courts are not powerless to shape a remedy requiring the return of that portion of the fund which would properly compensate the plaintiff.

CONCLUSION

The evidence presented at trial afforded two distinct but concurrent bases, namely express contract or implied contract, by reason of which plaintiff was entitled to a substantial recovery for the services he rendered to Interhandel. The judgment of the District Court should be reversed and this case remanded to the District Court with instructions either to enter a money judgment for plaintiff or to declare his equitable lien on Interhandel's share of the proceeds of the sale of its stock in General Aniline and Film Corporation or, alternatively, plaintiff should be awarded a new trial.

Respectfully submitted,

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ADDENDUM

Rule 52(a), Federal Rules of Civil Procedure

Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

Rule 59(a), Federal Rules of Civil Procedure

Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

BRIEF FOR APPELLEE.
SOCIETE INTERNATIONALE, etc.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ, Appellant,

v.

SOCIETE INTERNATIONALE, etc., Appellee.

Appeal From a Judgment of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED

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IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ, *Appellant*,

v.

SOCIETE INTERNATIONALE, ETC., *Appellee*.

Appeal From a Judgment of the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE.
SOCIETE INTERNATIONALE, etc.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

The principal issue before this Court is whether the findings of the court below are supported by substantial evidence and are not clearly erroneous. A subsidiary issue is whether the trial court erred when it denied appellant's motion to reopen.

An aspect of this case previously before this Court and not mentioned in the appellant's brief but involving the claims made herein, was the subject of a notice of appeal in the case of *Societe Internationale, etc. v. Robert F. Kennedy*, (D.C.D.C. 1964) 231 F.Supp. 132. An appeal from that decision was noted and subsequently dismissed by the appellant herein, Appeal No. 18,939.

STATEMENT OF THE CASE

A. Comparison of the Pretrial Order With the Proceedings at Trial and the Trial Judge's Decision

At pretrial, there were two counts in appellant's¹ complaint. The first count was described in plaintiff's pretrial statement as being for liquidated damages based upon an express promise of the appellee (J.A. 30)² and upon "an equitable lien theory in addition to, and as an alternative to, the contract theory set forth in the pretrial order."³

At page 4 of his brief, plaintiff states that there are two bases for his claim, the first being that defendant's express promise to pay was "solely for [plaintiff] obtaining the services of Charles E. Wilson"; while the second basis is asserted to be "one of implied contract or unjust enrichment for the services he [plaintiff] performed at the request of defendant". Neither at pretrial, nor in the pretrial papers, is there any mention of "implied contract or unjust enrichment" (J.A. 23-30).

The second count sounded in *quantum meruit*, and sought \$112,000 as a balance for the "reasonable value" of the services rendered by plaintiff at defendant's request between June 1, 1960 and December 31, 1961. The full claim was for \$150,000 under the allegations of that count, upon which plaintiff credited "interim payments" by defendant during this 19-month period at the rate of \$2,000 per month. In his pretrial statement, plaintiff described this count as the "unliquidated portion of his claim" (J.A. 30).

For an unexplained reason, he abandoned the second count at the trial (J.A. 88). On cross-examination, Mr.

¹ Hereinafter referred to as "Schmitz" or "plaintiff".

² Hereinafter referred to as "Interhandel", I. G. Chemie or "defendant".

³ There was no *res* upon which an equitable lien, even if it otherwise existed, could attach. *Robert A. Schmitz v. Societe Internationale, etc.*, 249 F.Supp. 757 (Judge Pine), January 9, 1966, affirmed without opinion in *Schmitz v. Societe Internationale, etc.*, No. 19,996, November 14, 1966; cert. den. 387 U.S. 908, 18 L.Ed.2d 626 (1967). The "equitable lien" theory was added to the pretrial statement by stipulation, but is not printed in the joint appendix.

Schmitz admitted that he had surrendered his claim to the \$112,000 (J.A. 396-399).

Judge McGarraghy viewed the implied contract—quasi contract—unjust enrichment claim as relating entirely to the procuring of Charles Wilson's willingness to act as negotiator for defendant, called a "finder's fee". This is understandable since plaintiff had abandoned his second count for the reasonable value of his services *after* Charles Wilson had accepted the appointment, and was pressing for recovery under the equitable lien-unjust enrichment theory solely in relation to the claim for a finder's fee under the first count.

It appears from plaintiff's brief, pp. 34-38, and from his argument at J.A. 1429-1430, that he might be claiming that his implied or quasi-contract theory encompasses the services alleged to have been rendered during the entire period—December, 1958 to December, 1961—a combination of finder's efforts and services otherwise rendered; but at pages 47-48, plaintiff obviously speaks solely about the same services—finder's—to which Judge McGarraghy referred in his Opinion.⁴

B. Reasons for Counterstatement of Facts

Defendant is dissatisfied with plaintiff's statement and feels required to restate the facts in its brief.⁵ Plaintiff's "Statement of Facts" contains erroneous and argumentative statements, distortions and exaggeration, and frequently tends to be supported by citations to the joint appendix which simply do not back up the asserted fact. Several instances will be mentioned.

While not of decisive importance, there is utterly no excuse for the plaintiff to tell this Court in the opening line of his "Statement of Facts" that defendant *recovered*

⁴ At the beginning of his opinion, Judge McGarraghy stated: "At trial, plaintiff announced that he would proceed only with Count I, that is, for compensation for procuring the services of Mr. Wilson. Only this is before the court" (J.A. 31).

⁵ Rule 28(b), Federal Rules of Appellate Procedure; *Investment Funds Corp. v. Bomar* (5th Cir. 1962) 306 F.2d. 32.

GAF (p. 5), nor on the preceding page to say that "the return of the seized property was brought about", nor on page 20 in plaintiff's "Summary of Argument" to say "the result was the recovery of defendant's very valuable property" (italics supplied), when, in fact, a money settlement was effected between the Attorney General and Interhandel, nor is there any reason for plaintiff to characterize the settlement as "extremely satisfactory" (p. 4) and then contradict himself and deprecate its size and terms at other places in his brief (pp. 17, 38, 39).

On page 11 of his brief, plaintiff insists that Dr. Hugo Frey was Interhandel's attorney in Switzerland, while Dr. Frey testified to the contrary (J.A. 1370-1). Plaintiff's purpose was to indicate that Dr. Frey was acting for Interhandel when, in fact, he was not (J.A. X-32).⁶

On page 12, plaintiff states that Charles Wilson consulted with "... the President [Eisenhower]", when he did not do so (J.A. 526). On the same page, plaintiff fixed June, 1959 as a "transitional stage" for Interhandel's management in order to gain an advantage of certain contentions made by him, while, in fact, the management transition took place a year earlier (J.A. 34, 85, 106, 154-155, 164, 511, 512, 1024, X-389). Plaintiff's purpose was to have it appear that his friend, Dr. Hans Sturzenegger, remained in control of Interhandel until June, 1959 (See plaintiff's brief, p. 34).

On page 13, plaintiff asserts that Dr. Alfred Schaefer, the head of Interhandel and of Union Bank, was actively trading [this word clearly means "buying and selling"] Interhandel shares on the bank's behalf, while there is no evidence that Union Bank sold shares owned by it, and Dr. Schaefer testified that his bank sold none (J.A. 1216). None of the citations to the joint appendix support plaintiff's statement. Plaintiff's purpose was to indicate that Union Bank profited from the sale of Interhandel shares when the market "went up" at the time of the public

⁶ References to the third volume of the joint appendix will hereinafter omit "J.A.".

announcement that Charles Wilson had accepted the so-called "trusteeship".

On page 16, plaintiff states that "Contacts were made" by Charles Wilson with the "new Attorney General [Mr. Robert F. Kennedy]". This is untrue and not supported by the joint appendix citations. Neither Charles Wilson nor his counsel, Mr. Spofford, had contact with Mr. Kennedy at any time; and Charles Wilson had been unable to make an appointment with Mr. Kennedy's Republican predecessor, Mr. William P. Rogers, except on an earlier occasion before he was engaged by Interhandel (X-163).

Several distortions occur on page 17 of plaintiff's brief. Two of them are as follows:

(1) It is stated that "Mr. Spofford anticipated that a settlement acceptable to the Swiss would soon be reached". Coupled with this is the remark on page 38 of plaintiff's brief that Dr. Schaefer "made a less favorable one [settlement] than they [Charles Wilson and Charles Spofford] could have obtained". Interhandel links these two remarks together because they are jointly discussed by Mr. Spofford in his deposition. Defendant asks the Court to examine pages 1355-57 and 1288-91 of the joint appendix for Mr. Spofford's versions. It will be seen that the first quotation above is an overstatement, and that the second one is simply made out of whole cloth.⁷

⁷ In the trial court's Opinion, J.A. 39, the following is stated:

"Plaintiff contends that, except for the intervention of Dr. Schaefer, Mr. Charles E. Wilson would have been able to negotiate a disposition of the matter at least as favorable, and possibly more favorable to Interhandel, than that which was the result of the intervention of Dr. Schaefer with the Attorney General."

After reading the above-cited pages of the joint appendix, it is no wonder that the Judge followed the foregoing statement by these remarks:

"This obviously is pure speculation. No agreement had been reached during the period when Mr. Charles E. Wilson and his attorney, Mr. Spofford, were actively engaged and the record is devoid of any evidence from which a determination can be made of the part which their efforts contributed to the ultimate result which was accomplished." (J.A. 39)

(2) Further, on page 17, it is partisan argument and not an objective statement of the facts, for plaintiff to assert that "the Attorney General *jumped* at the chance to settle [with Dr. Schaefer] on terms much more favorable than either the Attorney General or Mr. Orrick expected." (Italics supplied) Indeed, the entire statement is unsupported by plaintiff's citations to the joint appendix.

On page 18, plaintiff states that "neither the trustee [Charles Wilson] nor his attorney [Charles Spofford] were able to function effectively after Dr. Schaefer's meeting with the Attorney General". The fact is that both of these gentlemen elected not to function at all after that meeting (J.A. 1299, 1301, 1313). The joint appendix citations furnished by plaintiff to support his statement simply do not do so.

The foregoing are but some of the misstatements contained in plaintiff's "Statement of Facts". The significance of them will be clear as the Court becomes acquainted with the facts as they were proven.

The most salient deception in plaintiff's "Statement of Facts" lies, however, in a material omission. It will be kept in mind that plaintiff contends that the trial judge committed grievous error, on the evidence before him, in failing to find the existence of an express contract for defendant to pay him a 5% finder's fee. In making such a contention plaintiff has a duty and his counsel have a high professional responsibility to state fairly all the material evidence before the lower court which is relevant to the issues raised on appeal. Despite this, there is not a word in plaintiff's entire brief informing this Court that plaintiff admitted in writing, less than three months after he alleges that the agreement was made with Dr. Schaefer, that he had no deal with Dr. Schaefer regarding compensation (X-381). When confronted at the trial with such admission in a letter to his bosom friend and confidant, Dr. Sturzenegger, plaintiff omitted to explain

it (J.A. 395) and his counsel failed to question him about it on redirect examination.⁸

C. Counterstatement of the Facts

Prior to December 7, 1941, defendant, a Swiss holding corporation with headquarters at Basle, Switzerland, commonly known then as I. G. Chemie, and later as Interhandel, owned over 90 percent of the stock of General Aniline & Film Corporation (GAF), a Delaware corporation with headquarters in New York City (J.A. 90). GAF represented about 81% to 85% of Interhandel's portfolio (J.A. 90).

Plaintiff's father, D. A. Schmitz, was President of GAF (J.A. 92), which manufactured in the United States chemicals and dyestuffs, photographic equipment and supplies called ANSCO, and copying processes called OZALID (J.A. 91). D. A. Schmitz was removed as President of GAF by the United States Government before Pearl Harbor (J.A. 92), and shortly after that date, namely, on February 16, 1942, the United States Government vested I. G. Chemie's stock interest in GAF under the Trading with the Enemy Act upon the ground that it was a foreign national; however, shortly thereafter, the United States Government contended that both I. G. Chemie and GAF were German controlled or tainted (J.A. 91, 93).

Plaintiff was then about 20 years old (J.A. 562) and his father's assets, including bank accounts, were blocked by the Treasury Department (J.A. 563). The Schmitz family felt disgraced as well as mistreated by the Government, and plaintiff developed a zeal to accomplish the vindication of his father and their family (J.A. 117-119, 418, 452-453, 562-564, 829-830, 831-832, 1051, 1272-1273, 1284, 1305-1306). Shortly before Pearl Harbor, John J. Wilson, a Washing-

⁸ The page (X-381) of the joint appendix where this letter appears is cited by plaintiff on page 26 of his brief to support his statement that he was willing to look to the trustee for his eventual payment. Obviously, this is a complete *non sequitur* so far as the admission is concerned.

ton, D. C., lawyer, was retained by I. G. Chemie to represent its interests in relation to its GAF stock (J.A. 90).

For some years up to 1945, plaintiff's uncle, Dr. Albert Gadow, had been manager of I. G. Chemie at Basle, Switzerland (J.A. 97) and up to early 1958, Dr. Hans Sturzenegger, a Swiss private banker in Basle, had had actual and voting control of I. G. Chemie (J.A. 97-98, 106, 164, 523, 1024, 1027). Plaintiff had known both of these individuals very well since early boyhood, having spent considerable time in Switzerland with his uncle (J.A. 116, 123, 394, 434). Through his own family in America and his uncle and Dr. Sturzenegger in Switzerland, plaintiff had gained considerable knowledge concerning both GAF and Chemie (J.A. 575-576). About 1946, Remington-Rand (R-R) employed plaintiff to perform services of a technical nature in relation to its products and research (X-23), but within a short time his efforts were diverted by R-R to endeavoring to acquire for them the vested GAF stock through officials of I. G. Chemie (J.A. 122, 412, 414-416).

In 1948, John J. Wilson filed suit in the court below on behalf of Interhandel to recover the vested stock and other property (J.A. 99) and this litigation continued for many years without trial being reached, a dismissal with prejudice for failure to comply with a discovery order (J.A. 104) being reversed by the Supreme Court in 1958, at which time the case was reinstated (J.A. 106).⁹ In the meantime, Switzerland had gone into the World Court at the Hague on behalf of its national, Interhandel, and certain diplomatic interventions had also been attempted unsuccessfully to bring about the release to the Swiss of the vested property (J.A. 100-101).

From the R-R employment until the present time, with the exception of working for himself upon the perfection of certain patents, all of plaintiff's business activities and efforts have been devoted to the subject matter of the vested

⁹ This meant that Interhandel was back in a litigating position, and it had to be dealt with by the Attorney General, either in a trial or by compromise.

GAF stock, seeking and sometimes obtaining from American business enterprises agreements for him to act as their agent in the acquiring of the GAF stock for adequate consideration from the Swiss (J.A. 124-154, 411-412, 418-427). These arrangements, *when actually entered into*, sometimes involved a salary or other periodic compensation (J.A. 458, 723-724), and sometimes a percentage payment or interest to him contingent upon his success in bringing about the acquisition of the GAF stock by the American corporations from the Swiss (J.A. 454, 504). At the same time, plaintiff was soliciting and obtaining loans of money, with which to support or aid in the support of his family, either from Dr. Sturzenegger or his private bank in Basle (J.A. 552-553, 556-557, 559-560, 561, 585, 589, X-408). Plaintiff's testimony showed that he had a divided loyalty between his American principals, on the one hand, and the Swiss, on the other (J.A. 558, 580-585).

After disagreement with R-R (J.A. 123-124, 565) and an unsuccessful employment by Shields & Company (J.A. 421-424), as well as an unsuccessful attempt to be employed by the Atlas Corporation (J.A. 125-126; Mr. Floyd Odum), plaintiff became employed by W. R. Grace Co. in 1953 (J.A. 124). At that time Charles Wilson, formerly president of General Electric, who had held high places in the Government both during World War II and the Korean conflict, was a director and chairman of the executive committee of Grace (J.A. 719). Tommy Corcoran interested both Peter Grace and Charles Wilson in an effort to acquire GAF from the Swiss and about six months later Charles Wilson met plaintiff (J.A. 721-722). Grace failed to make a deal with the Swiss and plaintiff left its employment in 1957, having had a disagreement with Mr. Peter Grace (J.A. 569, 583), which caused him to write Dr. Sturzenegger to the effect that he would not permit Peter Grace to cheat him (J.A. 428, 435; X-384). Charles Wilson took an interest in plaintiff and helped him to become acquainted with Mr. Joseph Martino of National Lead, Mr. Frank Pace of General Dynamics, Mr. Munroe of

Air Reduction and Mr. Paul Davies of Food Machinery & Chemical Corporation (Food Machinery) (J.A. 429-430, 453, 830-831, 835-836). Plaintiff was unable to effectuate employment with any of these regarding the acquisition of the GAF stock, except a limited employment by Food Machinery. On page 23 of his brief plaintiff mentions six such companies. The alleged offer of General Dynamics never developed and plaintiff received nothing (J.A. 453); the National Lead Company offer was never executed (J.A. 455-456); the Shields & Co. and W. R. Grace & Co. contingency arrangements were terminated under unhappy circumstances (J.A. 424, 435, 569; X-384); and plaintiff's R-R employment also ended on a sour note (J.A. 123-124). The Food Machinery employment, for the period from November 24, 1958 until mid-January, 1959, required plaintiff, both in Switzerland and in the United States, to seek to ascertain methods and procedures to bring about the acquisition of GAF stock by Food Machinery (J.A. 151-152, 457-458; X-19). In connection with this mission, plaintiff learned that Interhandel had determined to abandon these three-cornered deals and negotiate directly with the United States Government (J.A. 157, 158, 164). Even though nothing came of this approach, plaintiff was paid \$5,000 for his services and expenses (J.A. 458; X-19).

At the end of 1958 and during the period of plaintiff's agreement with Food Machinery, Dr. Hugo Frey, a lawyer of Zurich, Switzerland, whose firm acted as counsel for Dr. Sturzenegger (J.A. 1370-1371), became active with plaintiff in an effort to interest Charles Wilson in assuming a trusteeship to try to work out the return of GAF to Interhandel, which by then, as stated above, was no longer interested in dealing with American companies. It is unclear how Dr. Frey could have brought about such a trusteeship for Interhandel. At that time Dr. Sturzenegger had disposed of his controlling shares in Interhandel and had resigned as a board member (J.A. 106, 154-155, 164, 511, 523, 836, 1024, 1026, 1027; X-32). Until June, 1959, he had retained a block of 13,000 common shares, being the

largest single stockholder (X-38). Dr. Frey was not acting for Interhandel (J.A. 1370-1371) and Dr. Sturzenegger stated that his own influence with the Swiss corporation had ended (J.A. 511, X-389). During this period, Charles Wilson was in active collaboration with plaintiff and Dr. Frey, showing a great interest in being chosen as trustee to bring about a solution of the controversy, to the extent of suggesting that as trustee he would like to have Charles Spofford act as his personal counsel, and going to see Attorney General Rogers as to whether the American Government would have any objection if he accepted such a position (J.A. 525, 527-528, X-309). Charles Wilson commenced advocating the justness of Interhandel's cause as early as 1957 (J.A. 838-839).

When Dr. Sturzenegger disposed of his controlling shares in early 1958 (J.A. 106-107, 1388) and resigned from any official connection with Interhandel, the Swiss Government interceded to prevail upon the leading bankers of Switzerland to go on Interhandel's board of directors and take over the management of Interhandel, and the three large public banks each provided an official for the board, such individuals being Dr. Alfred Schaefer of Union Bank, Dr. Pfenninger of Swiss Bank Corporation and Mr. Reinhardt of Credit Swiss (J.A. 106, 1024, 1026-1027). In early 1959, Union Bank, taking the lead, acquired and caused some of its customers to acquire, 10,000 shares of Interhandel stock from Dr. Sturzenegger (J.A. 612-613, 1025) so that he was no longer the largest single stockholder and the bankers were in firm control (J.A. 106, 154-155, 161-162, 164, 523, 1024, 1026, 1027, 1390). Dr. Schaefer of Union Bank was elected Vice-Chairman of the Board, but later on the other two banks and their representatives became virtually inactive and soon withdrew from the Board (J.A. 1027). Dr. Schaefer became the leading spirit of the company since Union Bank and its customers were holding about 30,000 shares out of a total of 110,000 (J.A. 1028). This block, with the solicitation of proxies from other stockholders, gave Dr. Schaefer actual control of Interhandel (J.A. 1027-1029).

With the withdrawal of Dr. Frey and Dr. Sturzenegger, plaintiff arranged in October, 1959 to have Dr. Frey introduce him to Union Bank and Dr. Schaefer. This was accomplished through Mr. Bruno Saager, a general manager of Union Bank who had responsibility for the stock exchange activities of Union Bank, a normal activity of a bank in Switzerland (J.A. 194-195, 1034, 1368-1369, 1378, 1394). Plaintiff was in Switzerland because of his Food Machinery contract in October, 1959, and he met with Dr. Schaefer on the 26th of that month (J.A. 196, 1033) presenting to him a written plan for the establishment by Interhandel of a "trusteeship" to prevail upon the U. S. Government to return Interhandel's vested assets to it in their entirety (X-41). Plaintiff proposed that an outstanding American personality of impeccable reputation should be chosen to approach the American Government for return as a matter of moral principle. Plaintiff stated that his interest in the matter was likewise one of principle, since his father's good name and reputation had been injured and he wanted to restore his father to his rightful status (J.A. 117, 119, 418, 452-453, 562-564, 568, 829-832, 1051, 1272-1273, 1284, 1305-1306). He suggested the name of Charles Wilson whose business standing in America was generally known to Dr. Schaefer (J.A. 1036). Plaintiff criticized the long drawn-out law suit and John J. Wilson's conduct of it (J.A. 570-573). Because it seemed to Dr. Schaefer that the end of the litigation was not in sight, plaintiff's proposal was favorably received and he approved of plaintiff's approaching Charles Wilson to see if he would accept the trusteeship (J.A. 1036-1038). Dr. Schaefer had not known or known of plaintiff prior to October, 1959, and had not known of his prior activities vis-a-vis the GAF stock, nor did he know that Charles Wilson had already shown a keen interest in assuming such a trusteeship at the instigation of plaintiff and Dr. Frey (J.A. 1034, 1038). In his meetings with Dr. Schaefer, plaintiff did not seek any compensation for himself, but did express the desire to have his father's

good name restored (J.A. 1035). Dr. Schaefer replied that if the plan succeeded "within the next few months" and the GAF stock was returned to the Swiss, he would see that plaintiff would be given employment in GAF, where his efforts and talents could be remunerated (J.A. 1208-1209, X-230).

Plaintiff returned to America after the October, 1959 meeting with the stated purpose of approaching Charles Wilson and perhaps arranging for a joint meeting in Paris between Dr. Schaefer and Charles Wilson (J.A. 205-208). After some correspondence between plaintiff and Dr. Schaefer, and a visit by Dr. Schaefer's assistant, Dr. Ulrich Wehrli, to the States to try to expedite the program, a meeting was arranged for Paris in late April, 1960 (J.A. 1038-1039). In the meantime, plaintiff had again visited Switzerland and had prepared, in collaboration with Dr. Ulrich Wehrli, drafts of corporate minutes, a power of attorney and an option to allow Charles Wilson a 90-day period to determine whether he would accept the "trusteeship" (J.A. 218-222, 622-624). These documents were eventually approved by Dr. Schaefer and the other bankers, all four of whom comprised the executive committee of the Interhandel eight-man board of directors (J.A. 1043-1044). A meeting took place in Paris near the end of April, 1960. The place was the Hotel Royal Monceau. Charles Wilson was accompanied by his friend and personal lawyer, Charles Spofford. Dr. Schaefer was accompanied by Dr. Ulrich Wehrli. Plaintiff was also present (J.A. 1047, 1265). Dr. Schaefer attempted to satisfy Charles Wilson's prerequisite that Interhandel must be free from German taint (J.A. 253-254, 1048) and the documents above referred to were carefully examined by Charles Wilson and Charles Spofford and found to be in acceptable form (J.A. 1267-1268). Charles Wilson indicated his willingness to accept the trusteeship, but wished first to return to America and ascertain from high officials in the American government, with whom he represented that he was intimately acquainted, whether there would be

any objection to his functioning in the manner planned (J.A. 259, 1046). Both Charles Wilson and plaintiff strongly stated that full return of the vested property should be sought and expected, since the principle of the matter was the important thing (J.A. 727, 1049-1050, 1051, 1184). Dr. Schaefer was pleased with this attitude and immediately acquiesced in this approach (J.A. 1048). Charles Wilson also represented that the Republicans then in power in the United States were his friends, particularly mentioning President Eisenhower and Vice President Nixon (J.A. 259, 525-526, 727, 1214-1215; See X-157).

While the power of attorney tendered Charles Wilson by defendant was couched in terms of irrevocability and absolute discretion and control in the trustee, three side agreements were made between Charles Wilson and Dr. Schaefer, two being oral and the other in writing. One oral agreement was that whenever defendant wished to terminate the power of attorney, Charles Wilson would be willing to do so (J.A. 1052-1053, 1143-1145; X-407). The other oral agreement was that Charles Wilson would be given an additional three-month option in which to accept the power of attorney in the event he needed more time (J.A. 264). The written, side agreement, in the form of a letter dated April 30, 1960 (J.A. 1053; X-272), was that no sale of the GAF stock would be agreed to by Charles Wilson without first submitting it to defendant for approval. With respect to the subject of compensation for the parties, Charles Wilson stated that he wanted none, except to have his expenses paid, and that his selected counsel, Charles Spofford, should be reimbursed for his expenses and receive an appropriate fee. These were promptly agreed to by Dr. Schaefer. As for plaintiff, Dr. Schaefer and Charles Wilson agreed that he should act as an assistant for Charles Wilson in any way desired, and that he should receive \$2,000 per month and his expenses (J.A. 1179-1150, 1183). According to Dr. Schaefer, nothing was stated at the Paris meeting, nor earlier or later, and no promise was made or agreement ever entered into, orally or in writing, whereby Interhandel

would pay plaintiff a finder's fee of 5 percent of the avails of a solution of the GAF case, payable upon recovery, for bringing about the acceptance of the trusteeship by Charles Wilson (J.A. 1207-1209). No other person at the Paris meeting corroborated the claim of plaintiff in this connection. The first time that a finder's fee of 5 percent or of any other percentage or sum was ever mentioned was plaintiff's letter to Dr. Schaefer dated January 17, 1962, and then it was qualified by the phrase "at least" (J.A. 902-906; X-263). Interhandel was notified on or about May 23, 1960, that Charles Wilson had accepted the trusteeship, and publicity to that effect occurred for the first time thereafter (X-121, 122, 123).

Within three months after the Paris meeting at which plaintiff claims that Dr. Schaefer repeated his promise of a 5 percent commission, plaintiff wrote his friend, Dr. Sturzenegger, as follows (X-381):

"As you perhaps know by now, Dr. Hugo Frey called both the Trustee and myself during his recent stay in New York, just prior to his return to Switzerland. I asked him to report to you as to the substance of our talk together, as it was possible for me to lunch with him the day he left. Dr. Frey is a meticulous gentleman who most certainly means well. He appeared however inordinately concerned about my personal welfare and affairs, and seemed worried that, whereas had this matter eventuated in 1958-1959, I would have been assured good treatment, on the other hand, perhaps Dr. Schaefer and Union Bank would be otherwise. I told him that, although, I had no deal, I was not primarily concerned here at the moment, but that there was a job to be done, independently, by an independent Trusteeship, for the good all around to end this sad case properly. Enough said here."

Plaintiff identified the foregoing letter upon his cross-examination (J.A. 394-395) but no explanation of it was offered by him in his redirect examination. This letter is not explained in plaintiff's brief.

During the remainder of the year 1960, Charles Wilson made no material progress toward a solution of the Interhandel-GAF controversy. He was unable to make an appointment with Attorney General Rogers, but saw Assistant Attorney General Townsend (in charge of the Office of Alien Property) on several occasions. He was unable to obtain an appraisal of the GAF properties which he considered a prerequisite to negotiations (J.A. 1349; X-301-302). No offer of settlement was proposed by either side. Mr. Spofford saw Mr. Townsend also, but likewise to no avail (J.A. 1229-1230, 1303-1304, 1337, 1360-1361). By letter dated February 24, 1961 (X-201) Charles Wilson acknowledged a "deadlock" in the Interhandel matter (X-202). Mr. Spofford began working on a narrative of the case to present to government officials since none was in existence (J.A. 1279-1283). Both plaintiff and John Wilson supplied him with information for the memorandum (J.A. 1272, 1280-1284, 1345-1346, 1347).

Charles Wilson transmitted on August 4, 1960, to Dr. Schaefer a letter (J.A. 842, X-433) from plaintiff to Mr. Wilson (X-137), seeking "interim payment" of \$25,000 for the period from July 1, 1960 to December 31, 1960. Dr. Schaefer, acting pursuant to his discussion with Charles Wilson in Paris, by letter dated August 30, 1960 (X-151), offered plaintiff \$2,000 per month and this was accepted by plaintiff (X-157). Dr. Schaefer's letter stated as follows:

"Mr. Charles E. Wilson has sent me your letter of August 1, and I had in the meantime the opportunity of discussing this matter with my colleagues of the Executive Committee of the Board.

"Already at the occasion of our meetings in Zurich and Paris I told you how much we appreciate your assistance and that we entirely agree to hold at your disposal certain sums as a compensation for the time you spend in this connection.

"As to the program outlined in your letter, I however believe that for the time being we have to split it up into two parts. At present, the main item will definitely be to help Messrs. Charles Wilson and

Spofford in their endeavors and to keep all necessary information at their disposal. Quite a different task might arise if and when once the first decisive step in the direction we all have in mind will be accomplished. I am fully aware that at such a time perhaps a much farther reaching cooperation will be required. I therefore should like to propose you, in agreement with my colleagues of the Executive Committee, for the present period a monthly retainer of \$2,000, and to re-examine the situation when our plans have further proceeded."

Plaintiff was in Zurich during the forepart of October, 1960 and upon his return a check for \$10,000 was sent him by defendant covering five months from June 1, 1960 through October, 1960. Thereafter \$2,000 a month was paid plaintiff to the end of 1961, together with reimbursement for his expenses (J.A. 384, 842-844; X-435-465). In replying to Dr. Schaefer's letter of August 30, 1960, plaintiff wrote Dr. Schaefer on September 19, 1960 (X-157), that the \$2,000 monthly payments were initial payments on account of interim services to Messrs. Wilson and Spofford, and that they would not compensate for any services otherwise rendered by him, or for any capital interest to be created on his behalf or created through services over a period of years. No part of this statement is confirmatory of an agreement for the so-called finder's fee of "at least 5%". Instead, it is consistent with the lack of a "deal", as expressed to Dr. Sturzenegger two months earlier, and with Dr. Schaefer's explanation of the kind of a reward which might be given plaintiff in the event of the successful return of the GAF stock to Interhandel through the efforts of Charles Wilson and Charles Spofford. (See Dr. Schaefer's letter of May 29, 1961, X-230, and his testimony about promising employment for plaintiff at GAF (J.A. 1178).

At the Paris meeting, Charles Wilson had orally agreed that he would give up the powers upon request (J.A. 1052, 1107, 1145). By letter dated December 19, 1960 (X-490) Charles Wilson stated that he would withdraw upon a telegraphic request from defendant, and this was repeated in a letter dated March 27, 1961 (X-284).

A new Attorney General (Robert F. Kennedy) came in office in January, 1961, and William Orrick was appointed shortly thereafter as an Assistant Attorney General in charge of the Civil Division, to which the Office of Alien Property was transferred (J.A. 467). About this time Dr. Schaefer was highly impatient with the lack of progress and determined that he would personally like to go to the United States and see for himself what was the status of the matter (J.A. 1186, 1284). He expressed this to the plaintiff and to Mr. Spofford in March, 1961, while the latter was on a visit to Zurich (J.A. 1285). At that time Mr. Spofford was putting the finishing touches upon his narrative statement of the case. On that visit, Dr. Schaefer brought up the thought that it might be desirable for Charles Wilson to withdraw. When Charles Spofford returned to the States, he wrote Dr. Schaefer on March 31, 1961 (X-503), endorsing the program agreed upon in Zurich and reconfirming the willingness of Charles Wilson to surrender the trusteeship whenever requested, as outlined in Mr. Wilson's letter of March 27, 1961 (X-284). Dr. Schaefer came to America in May, 1961 and Mr. Spofford took him to see several Senators and Government officials (no top ones), including William Orrick (J.A. 1081-1085, 1285). The trip was disappointing to Dr. Schaefer, not only because of the lack of evidence of progress on the part of Charles Wilson and Charles Spofford, but because there was a display of outright antagonism toward a solution on the part of government officials (J.A. 470, 1084).

On May 29, 1961, Dr. Schaefer wrote plaintiff that he thought it was necessary to terminate the monthly payments of \$2,000 at the end of June, but "Should the entire question of GAF in the next months by means of the efforts of the Trustee together with Mr. Spofford be advantageously liquidated, then we would naturally not fail to compensate the collaborators [obviously meaning or including plaintiff] of the Trustee for a balance payment for the work after June" (J.A. 867-869; X-230). However, the monthly payments were resumed until the end of the

year when his services were finally terminated (J.A. 885; X-458, 465). Plaintiff was reimbursed for his expenses and, in addition, was paid \$38,000 for his services from June 1, 1960 through December 31, 1961 (J.A. 384, 842-844; X-435-465). Plaintiff makes no claim for compensation for the year 1962 or thereafter (J.A. 399-400).

In June, 1961, a lawyer-friend of Dr. Schaefer's in Zurich, named Dr. Gutstein, who was also a long-time customer of Union Bank, hearing that no progress was being made in the American efforts, suggested that he had a client who might be asked to introduce Dr. Schaefer to Attorney General Kennedy. The client was Prince Radziwill, brother-in-law through Mrs. John F. Kennedy, of the Attorney General (J.A. 1092-1093). Dr. Schaefer wrote Mr. Spofford on June 27, 1961 that "It really looks like as if negotiations could be started on a more realistic basis than before". (X-353) When he had met the Prince, Dr. Schaefer promptly notified Mr. Spofford by letter dated July 21, 1961, that he had been able to make a new contact with "one of the highest authorities", and he hoped to report further developments within a few days (X-489). Dr. Gutstein had brought his client and Dr. Schaefer together for a brief interview, during which the Prince sought and was given assurances as to the non-German character of Interhandel (J.A. 1096-1097). After discussing Dr. Schaefer's first proposal of using the proceeds from GAF to set up a European Bank for the aid of under-developed countries, the Prince stated that he would undertake to effect the introduction of Dr. Schaefer to the Attorney General. Thereafter, the Prince apparently conveyed the European Bank proposal to the Attorney General who rejected it out of hand (J.A. 474). In August 1961, when Dr. Schaefer was told that the Attorney General would see him, he wrote both Charles Wilson and Charles Spofford on August 24, 1961 to suspend their activities as he was coming over to the States shortly (X-282). Charles Wilson replied on August 30, 1961 that he was pleased to receive this news (X-283).

Charles Spofford was in Europe at that time on vacation but his secretary forwarded Dr. Schaefer's letter to him (X-515). He went to Zurich on September 6, 1961 and spent the day with Dr. Schaefer. At that time, Dr. Schaefer told Mr. Spofford of Prince Radziwill's arranging for the introduction, and while appearing to be concerned about this manner of approach, Mr. Spofford expressed the view that Dr. Schaefer had no choice but to pursue it (J.A. 1354-1355). This change in procedure caused Mr. Spofford to determine to drop out of the case and to advise Charles Wilson to do the same. Thereafter, they did nothing of a substantial nature in connection with the matter. This was explained in Mr. Spofford's letter of September 18, 1961 (X-495):

"I should like also to take this occasion to report on my talk with Mr. Wilson after my return from Zurich. I disclosed to him in the greatest confidence (the reasons for which were immediately apparent to him) the proposals which you had told me of in Zurich. He felt, as I did, that the proper course was to await the results of the initiatives you had taken through other channels. In the light of developments and in consultation with you it could then be determined what, if anything, we might contribute to the solution of your problem, whether along the lines of the new initiative or the earlier approach Orrick had suggested to me, or any further alternatives that might appear. I told him you expected to keep us advised of developments."

Up to Charles Spofford's departure to Europe in August, 1961, he had made six visits to William Orrick and a number of telephone calls (J.A. 1353-1354). They had discussed the case generally, but at no time did they reach the point of discussing percentages. (J.A. 1288). The idea of full return had been summarily rejected by the Department of Justice. No offer to the trustee or his counsel of any kind had ever been made by William Orrick as a basis of settlement, nor by anyone else connected with the Government; and neither Charles Spofford nor his assistant, Sam Pryor, ever heard of any offer being made (J.A. 490-491, 1329-1330, 1337, 1352, 1360-1361). Up to the time that Charles Spof-

ford became inactive in the matter, he had no negotiations regarding the intervenors in the law suit, the merits of the government's tax claim against defendant or the value of the Interhandel shares held by the Attorney General (J.A. 1349, 1356). There is no creditable evidence in the case as to what Messrs. Wilson and Spofford could have accomplished in the way of a settlement had they gone forward with their efforts; nor is there any evidence of a substantial nature of any efforts by Charles Wilson after the Kennedy administration came into office in January, 1961, toward effectuating a solution of the matter with anyone in the Government.

With the knowledge of Charles Wilson, Mr. Spofford helped to arrange an appointment for Dr. Schaefer to call upon Attorney General Kennedy the last days of October, 1961 (J.A. 1311-1312; X-498). Dr. Schaefer went alone to the first meeting, as was the requirement of the Attorney General (J.A. 1124-1125), where he and Mr. Kennedy agreed to the principle that the case should be settled, and the latter strongly indicated that it had to be on a more-or-less fifty-fifty basis (J.A. 1152, 1155-1156). After this meeting, Dr. Schaefer met with the Deputy Attorney General, Mr. (now Justice) Byron White and other department officials, and their attitude was quite negative toward any settlement at all (J.A. 1117, 1160). Dr. Schaefer met with Charles Wilson and Charles Spofford on November 1, 1961 in New York, at which time Dr. Schaefer reported what had transpired (J.A. 1115-1116, 1152). The "trustee" activities ceased at this time (J.A. 1299, 1301, 1313).

In November and December, 1961, there were exchanges of cables between Attorney General Kennedy and Dr. Schaefer, in which Dr. Schaefer was pressing for a decision on the part of the American Government (X-370-371); and around the middle of December, Mr. Orrick happened to be in Zurich and he called upon Dr. Schaefer for a further discussion of the possibilities of settlement (J.A. 501). Finally, in January, 1962, the Attorney General cabled that he was willing to pursue negotiations with Dr. Schaefer if the basis would be approximately fifty-fifty (X-373).

On February 12, 1962, Dr. Schaefer wrote Charles Wilson to the effect that the trusteeship was terminated (X-313). Charles Wilson replied on March 26, 1962, expressing some resentment at Dr. Schaefer's conduct in pursuing negotiations alone, but acquiescing in the termination, and suggesting monetary details to be concluded, such as his accounting for the expense money advanced him and the rendering and payment of Charles Spofford's bill for legal services (X-406).

In April, 1962, by prearrangement, Dr. Schaefer met for a three-day conference at Munich, Germany, with Mr. Orrick in order to hammer out the components of a settlement (J.A. 1126-1127, 1332-1334). Mr. Orrick was accompanied by a special assistant and Dr. Schaefer by Mr. Saager, Mr. Brupbacher (a director of Interhandel) and Dr. Edmund Wehrli, Interhandel's Swiss lawyer. The general items were agreed upon at that time, and the details were left for negotiation by Dr. Edmund Wehrli and John Wilson with people from the Department of Justice (J.A. 474-476).

While the formal surrender by Charles Wilson of his "trusteeship" was delayed until the fall of 1962, it was clear to all the parties that the activities of Messrs. Wilson and Spofford ceased in the late summer of 1961, and though these gentlemen resented the intrusion by Dr. Schaefer, they acquiesced in it and did nothing further. Indeed, Charles Spofford urged that settlement negotiations should be well underway before Congress returned in January, 1962, when the risk of passage of a "sales" bill would exist (X-498). Dr. Schaefer proceeded openly so far as Messrs. Wilson and Spofford were concerned, and he was justified under the circumstances in taking advantage of the opportunity for the introduction which was made available to him. There is no evidence of any impropriety in this connection, and none is claimed by the plaintiff.

The resolving of the details of a settlement was handled under the supervision of Mr. Orrick until he was trans-

ferred to the State Department sometime in 1962 (J.A. 476). By that time defendant's counsel had brought counsel for the numerous intervenors in sympathy with a settlement which was thought to be virtually fifty-fifty, and which contemplated recognizing the Government's tax claim at \$17,500,000, and paying a value for the Interhandel shares held by the Attorney General of \$6,500,000. It was part of the understanding at that time that the aggregate of these two items, namely, \$24,000,000, would be deducted from the sale proceeds before dividing the balance on an equal basis (J.A. 109-111). However, when Mr. Katzenbach, Deputy Attorney General, succeeded Mr. Orrick in the handling of the matter, the negotiations were terminated around Christmas, 1962 and were not resumed until February, 1963 when Mr. Katzenbach exacted as the price of resumption the concession from defendant that the \$24,000,000 would come out of defendant's share (J.A. 1237-1240). A settlement stipulation was thereafter executed between the Attorney General and defendant¹⁰ and after protracted proceedings before Judge Pine, a sale of the GAF shares was effectuated by the Attorney General in the spring of 1965. Defendant's gross share was \$145,000,000 and after the aforementioned \$24,000,000 was deducted, defendant's net share was \$121,000,000, all of which has been remitted to defendant in Switzerland (J.A. 111).

SUMMARY OF ARGUMENT

Plaintiff's brief raises a specter that there is insufficient evidence to support the lower court's factual findings. As a part of this challenge the plaintiff, while admitting the contradictory nature of the testimony, maintains that the court erred in not accepting his uncorroborated version. The argument which ensues will show that there was over-

¹⁰ This is included in the record on appeal, but is not printed in its joint appendix.

whelming evidence to support the following basic conclusions of the lower court:

1. That defendant did not expressly agree to pay the plaintiff a fee of 5% of any settlement if the plaintiff persuaded Charles Wilson to accept the trusteeship.

2. That the court was compelled to deny recovery since the plaintiff adduced no evidence as to the reasonable value of his services, a fact admitted by plaintiff's counsel (J.A. 1428).

3. That the defendant was not unjustly enriched as a result of the plaintiff's activities.

The foregoing critical findings being well supported by the evidence, the decision of the lower court should be affirmed.

With regard to plaintiff's motion to reopen, it is clear from its face that it does not make the showing of diligence required. In addition, it does not undertake to set forth the nature of the evidence to be adduced and it cannot be determined that if reopening was permitted, there is a substantial likelihood that it would alter the result. Accordingly, the motion was properly denied.

ARGUMENT

I

The Court's Findings Must Be Affirmed Since They Are Well Supported By Substantial Evidence and Are Not Clearly Erroneous

Rule 52(a) of the Federal Rules of Civil Procedure, requires that the judgment below must be affirmed. The application of Rule 52(a)¹¹ was well summarized recently

¹¹ The pertinent sentence of the rule reads as follows: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of witnesses."

in *Zenith Radio Corp. v. Hazeltine Research*, 395 U.S. 100, 123, 23 L.Ed.2d 129, 148 (1969), where the Court said:

"In applying the clearly erroneous standard to the findings of a district court sitting without a jury, appellate courts must constantly have in mind that their function is not to decide factual issues de novo. The authority of an appellate court, when reviewing the findings of a judge as well as those of a jury, is circumscribed by the deference it must give to decisions of the trier of the facts, who is usually in a superior position to appraise and weigh the evidence. The question for the appellate court under Rule 52(a) is not whether it would have made the findings the trial court did, but whether 'on the entire evidence [it] is left with the definite and firm conviction that a mistake has been committed.' " [Citations omitted]

II

The Trial Judge Correctly Held That Plaintiff Failed To Prove an Express Oral Contract for a 5% Fee

It is submitted that the plaintiff cannot establish that Judge McGarraghy's findings are clearly erroneous, nor can he disregard the trial court's prerogative to judge of the credibility of the witnesses, particularly, plaintiff and Dr. Schaefer.

Plaintiff sued defendant to recover \$11,250,000¹² upon an alleged oral promise by Dr. Schaefer to pay plaintiff a finder's fee of 5% if he could procure Charles Wilson to act as negotiator for Interhandel in the solution of the Interhandel-GAF controversy with the Attorney General of the United States. The trial court stated (J.A. 41-42):

"Only the Plaintiff and Dr. Schaefer were present when the alleged oral promise was made. Plaintiff insists that there was such an agreement; Dr. Schaefer is equally adamant in opposition. In this posture, the court must look for evidence which corroborates either the Plaintiff or Dr. Schaefer."

¹² J.A. 16, 18; ¶ 14 of the Complaint, and ¶ 1 and 2 of the prayers of the complaint.

Judge McGarraghy then wrote that "the court is of the opinion that the plaintiff has failed to prove by a preponderance of the evidence that there was an express oral contract for a 5% commission or any commission for procuring the services of Mr. Charles E. Wilson." (J.A. 42) This is followed by nine numbered paragraphs of reasons in the lower court's Opinion, (J.A. 41-46), and concludes with the following (J.A. 46):

"In sum, the court is convinced that there is no evidence—except plaintiff's *ipse dixit*—of the existence of an express oral contract to pay a 5% commission. Plaintiff has failed to prove an express contract."

The most remarkable thing is that plaintiff's letter of July 13, 1960 to his close friend, Dr. Sturzenegger (X-381), written less than three months after Dr. Schaefer is alleged to have last made a promise in Paris in April to plaintiff to pay him such a fee,¹³ and stating plaintiff had "no deal" with Dr. Schaefer, is mentioned only once in plaintiff's brief, and in an entirely different context. It will be found cited in the middle of page 26 of his brief for a wholly unrelated statement—"plaintiff was willing to look to the trustee for his eventual payment"—which, indeed, is itself contradictory of an express promise.

The trial judge had the following to say in his Opinion in connection with this letter:

"6. In plaintiff's letter of July 13, 1960 (9 months after the alleged promise had been made) to Dr. Sturzenegger the following appears concerning plaintiff's compensation:

'(Dr. Frey) . . . appeared inordinately concerned about my personal welfare and affairs, and seemed worried that, whereas had this matter eventuated in 1958-1959, I would have been assured good treatment,

¹³ Six months after the first promise is alleged to have been made by Dr. Schaefer to plaintiff in Zurich upon the occasion of their first meeting (J.A. 202).

on the other hand, perhaps Schaefer and Union Bank would be otherwise. I told him that, *although I had no deal, I was not primarily concerned here at the moment*, but that there was a job to be done, independently, by an independent trusteeship, for the good all around to end this sad case properly. Enough said here.' (emphasis added)

"If plaintiff had a firm promise for a 5% commission in October, 1959, it is highly unusual that he should tell his close confidant in July, 1960 that he had 'no deal' and was not 'primarily concerned' with a deal but with getting the job done." (J.A. 44)

Plaintiff's arguments may be epitomized as follows: That the evidence establishes the probability and credibility of such oral promises, the necessity that they not be reduced to writing, and the reasonableness of the amount of the fee.

Judge McGarraghy dealt with all these contentions in nine numbered paragraphs of his Opinion. For the convenience of the Court, defendant quotes the relevant portions in the appendix hereto. Every statement made by the trial judge in those nine paragraphs is abundantly supported by the evidence. While he did not say in so many words that he did not believe plaintiff concerning an express promise, it is obvious that this conclusion by the judge underlies his Opinion.

With the burden of proof resting upon him, plaintiff has no "live" witness nor any written evidence to corroborate him. As the lower court said, Dr. Schaefer categorically denied the existence of any such arrangement (J.A. 1207-1208). Dr. Schaefer's assistants, Dr. Ulrich Wehrli and Bruno Soager also testified that they heard nothing about a finder's fee of 5% (J.A. 607, 1385; X-267). Dr. Wehrli further stated that in Paris, after their meeting, plaintiff told him that Dr. Schaefer was talking to him about his personal future (J.A. 600). Plaintiff's letter of May 4, 1960 to Dr. Wehrli (X-114) is inconsistent with a contingent

5% finder's fee agreement in that it refers to "a provision for fees [for plaintiff] during the next ninety days". Even his principal witness and patron, Charles Wilson, who did not overhear the alleged fee discussion between plaintiff and Dr. Schaefer in Paris (J.A. 980), would not support plaintiff as to when the fee was to be earned.¹⁴ Asked on cross-examination what plaintiff told him about his fee, Mr. Wilson testified as follows:

"Q. Did he say to you that Dr. Schaefer had promised him 5 percent of the avails of a settlement, which he would have earned the moment you accepted the trusteeship?

"A. No, I didn't say that.

"Q. And he didn't say that to you either, did he?

"A. He did not." (J.A. 981)¹⁵

Add to the foregoing the letter to Dr. Sturzenegger, concerning which there could be no motive with his close friend either to withhold or distort the truth; plus the statement in that letter, which corroborates Dr. Schaefer as to plaintiff's motive to help—

" * * * I was not primarily concerned here [with being 'assured good treatment' by Dr. Schaefer] at the moment, but that there was a job to be done, independently, by an independent trusteeship, for the good all around to end this sad case properly. * * * " (X-381);

plus the statement in plaintiff's letter to Dr. Schaefer dated January 17, 1962 (X-263), in which he made claim "of the very substantial finder's fee of *at least 5% of the moneys derived from the concluded sale,*" (X-264, italics supplied)

¹⁴ Mr. Charles Wilson sought to leave the impression that plaintiff was entitled to compensation for services rendered by plaintiff prior to his meeting with Dr. Schaefer in October, 1959. But, with the exception of working with Dr. Frey for Dr. Sturzenegger in late 1958 and early 1959—not for Interhandel—plaintiff's activities from 1946 to 1959 had been solely for American businesses seeking to acquire GAF.

¹⁵ This testimony flatly contradicts plaintiff's testimony at J.A. 592-594.

despite the fact that plaintiff testified that the percentage was definitely fixed at 5% (J.A. 390-391); and the following emerges:

(1) Plaintiff admitted in writing that he had no agreement;

(2) Dr. Schaefer denied any such agreement, and Dr. Ulrich Wehrli and Bruno Saager testified that plaintiff did not mention it to them;

(3) The agreement that plaintiff described to his friend, Charles Wilson, was different from the one relied upon by plaintiff;

(4) When he first put the terms of the alleged agreement down on paper, he claimed not precisely 5%, but *at least* 5%, another departure from his testimony.

What does the documentation offered in the trial indicate? What do the circumstances indicate? In dealing with these questions, a survey of the panorama of plaintiff's activities should be helpful.

For thirteen years (1946-1959), plaintiff was engaged or sought engagement by American businesses to bring about their acquisition of GAF from the Swiss (J.A. 124-127, 130-131, 140-142, 144-151, 419-421, 722-724). This finally came to an end when Interhandel became no longer interested in this kind of a solution, but determined upon direct negotiation with the United States Government (J.A. 158, 164).¹⁶

He then began to deal, not with defendant, but with its largest stockholder, Dr. Sturzenegger and the latter's lawyer, Dr. Frey, to bring about the Charles Wilson "trusteeship". This had to be abandoned in 1959, when Dr. Sturzenegger sold his shares to Dr. Schaefer's bank, Union

¹⁶ On page 24 of his brief, plaintiff gives as a reason for the large fee that he was changing sides and could no longer earn money from American interests in their efforts to "Americanize" GAF. But, in pressing this argument, plaintiff overlooks the fact which he urged at page 9 of his brief, that the opportunity, by choice of the Swiss, to continue in this field had come to an end in 1958.

Bank of Switzerland, and the bank's customers. Plaintiff admits that he had no agreement with Dr. Sturzenegger, written or oral (J.A. 388). Indeed, he was advised by letter of March 13, 1959 from Dr. Frey that he had no mandate for his services from either Dr. Sturzenegger or Interhandel (X-32), a fact he admitted (X-478).

It is of more than passing importance that by the time of the abandonment of the Frey-Schmitz-Wilson program in early 1959, Charles Wilson was practically ready to undertake the "trusteeship" for Interhandel. He had been to see Attorney General Rogers for clearance to act in this capacity (J.A. 730-731), and he had announced to his colleagues that he desired Mr. Spofford to be his special counsel if the "trusteeship" came about (J.A. 731). Thus, in ¶ 8 of his Opinion, quoted in the appendix to this brief, Judge McGarraghy stated that it was "highly questionable whether plaintiff had to do much convincing of Mr. Charles E. Wilson." (See J.A. 164-165, 525, 527, 976 X-390-391, 477-479)

Seven months elapsed before Charles Wilson accepted the undertaking (October 1959-May 1960). Plaintiff points out that he received no compensation for this period, although he incurred and was paid over \$13,000 in expenses. He emphasizes that it would not be reasonable to expect him to work for nothing.

Dr. Schaefer explained this situation as follows:

"First of all, I was very agreeably surprised because Mr. Schmitz told me that he offered his help for our sake, for justice's sake, for the reestablishment of the family prestige, that he did not—wasn't interested in compensation. * * * I told him that, as his principle was that we should get back General Aniline fully, that in this case it would go without saying that if there would be justified claims from his family side, from his father's side, they would certainly be honored and that also for him, there could certainly be a place or a commission or work in this General Aniline firm." (J.A. 1177-1178)

Plaintiff's willingness to work for Interhandel without fee arrangement is documented in his letter of April 23, 1959 (X-477-479).

Beginning with June, 1960, plaintiff claims to have been busy assisting Charles Wilson and his lawyer, Charles Spofford. This continued until December 31, 1961, and for these nineteen months defendant paid plaintiff \$38,000, at the rate of \$2,000 per month, plus expenses. These payments were made pursuant to an agreement in Paris in April 1960, between Dr. Schaefer and Charles Wilson (J.A. 1179). For this period of time, plaintiff claimed in the second count of his complaint that the value of his services was \$150,000, but he abandoned this count, without explanation, during the trial.

However, an examination of certain correspondence occurring in August, 1960, throws light upon the matter of compensation. There are two letters, one by plaintiff to Charles Wilson dated August 1, 1960 and sent to Dr. Schaefer (X-137), and the other from Dr. Schaefer to plaintiff dated August 30, 1960 (X-151).

A reading of plaintiff's letter clearly shows that the "special functions" or "special services" contemplated by him related to planning in anticipation of the full recovery of the GAF business, since the second paragraph states that these are "on a basis collateral to the trusteeship", and the third paragraph expressly spells them out, as follows:

"These special services related substantially to the organizing and making ready programs and facilities for the eventual interim administration of the object enterprise, and thereby to facilitate the holding and application of the property as desired subsequently by the Trustee under the terms of the Trusteeship." (X-137)

Dr. Schaefer's reply clearly divides plaintiff's services into two parts, according to the third paragraph, which reads as follows:

"As to the program outlined in your letter, I however believe that for the time being we have to split it up into two parts. At present, the main item will definitely be to help Messrs. Charles Wilson and Spofford in their endeavors and to keep all necessary in-

formation at their disposal. Quite a different task might arise if and when once the first decisive step in the direction we all have in mind will be accomplished. I am fully aware that at such a time perhaps a much farther reaching cooperation will be required. I therefore should like to propose you, in agreement with my colleagues of the Executive Committee, for the present period a monthly retainer of \$2,000.—, and to re-examine the situation when our plans have further proceeded.” (X-151)¹⁷

Paragraph 4 of the lower court’s Opinion refers to plaintiff’s mention of a “capital interest” in the eventual settlement. This appears in plaintiff’s letter of September 19, 1960 to Dr. Schaefer (X-157), the paragraph reading as follows:

“Such payments [\$2,000 per month] are made available as initial payments on account of interim services to Messrs. Spofford and Wilson on your behalf. The foregoing, however, will in no way compensate for any services otherwise rendered by me *or for any capital interest to be created on my behalf* or created through services over a period of years.” [emphasis supplied]¹⁸

This is not only vague, as the trial judge said, especially at a time when, even according to plaintiff, secrecy was no longer required, but it fits perfectly into the re-

¹⁷ Dr. Schaefer was asked what was meant by the last sentence. He replied (J.A. 1186):

“That when the agreement would be reached—that means, when we would get back General Aniline—that we could cooperate in the form that Mr. Schmitz could have a position in General Aniline as his father had, or along these merits.”

¹⁸ It will be noted that plaintiff wrote Dr. Schaefer two letters dated September 19, 1960. The second and longer one is P.Ex. 75 (X-158). This is mentioned here since P.Ex. 76 (X-163) is a reply by Dr. Schaefer, dated September 22, 1960, to one of the letters of September 19th. It was established at the trial that Dr. Schaefer was replying to the longer letter (J.A. 1188-1190). Thus, the phrase in the second paragraph of Dr. Schaefer’s letter, that the Executive Committee of Interhandel “agree with it in all its parts”, is not to be taken as any reference to the above-quoted paragraph from the shorter letter.

marks of Dr. Schaefer in his letter of August 30, 1960 (X-151), and into his testimony at J.A. 1177-1178.

The subject again came up in reference to Dr. Schaefer's letter of May 29, 1961 (X-230) at J.A. 1208-1209, where Dr. Schaefer gave the same explanation regarding the fourth paragraph of that letter as he had at J.A. 1177-1178.

On the same page, J.A. 1209, Dr. Schaefer made a statement that would, defendant submits, weigh heavily with any trier of the facts, namely:

"A. * * * If I would have promised a fee or a commission in percentages, considering the sums involved, I would have had a written agreement, have to submit it to my colleagues, and to the Board of Interhandel because it would have meant millions of dollars. I would not have done a thing like that at all."

Plaintiff devotes two pages of his brief (pp. 32-33) to excuses why an oral agreement was necessary and appropriate. He begins by stating that Dr. Schaefer insisted upon it. Of course, this was denied by Dr. Schaefer, since he says no agreement was ever made. The citations to the joint appendix (pp. 203, 387) are only plaintiff's testimony, and the citations to X-41, 46, and 54 do not corroborate him. In fact, Charles Wilson's name was mentioned in writing as an independent intermediary with "absolute and irrevocable power" in plaintiff's memorandum of January 28, 1959 (X-21). Moreover, there were written discussions pertaining to a fee for plaintiff even before Charles Wilson accepted the "trusteeship" (X-114, 116, 119). While plaintiff's brief attributes the secrecy requirement to Dr. Schaefer, he testified it was originally imposed in 1958 by Dr. Sturzenegger who expressly demanded there be no writings of the proceedings to attain the trusteeship (J.A. 387). This alleged restriction was not honored by plaintiff or his colleagues for the record is full of such writings (X-20, 21, 23, 24, 25, 29, 33, 35, 37).

Charles Wilson's name also was mentioned in plaintiff's memorandum to Dr. Schaefer dated April 26, 1960 (X-95,

¶¶ 14, 16, X-96) and it would have required little detective work to find out who was "Mr. _____ of 7 Hampton Road, Scarsdale, New York" (Draft "A" dated February 29, 1960; X-64, ¶ 26, X-76); and the entire plan was the subject of numerous writings, beginning with plaintiff's memorandum to Dr. Schaefer, dated October 26, 1959 (X-41) and ending with the Power of Attorney which appears at X-108-11, and which was executed by Dr. Schaefer in Paris on April 28, 1960.¹⁹ Indeed, these writings encompass seventy (70) pages in the joint appendix (X-41-111).

If there had been a fee agreement, then it was no more sensitive than the disclosure of the plan itself. It could easily have been put down in writing without undue risk to exposure of the plan before Charles Wilson accepted. It did not have to be contained "in any of the trusteeship documents" (Brief, p. 33). A simple exchange of letters, not even exposed to the mails, since plaintiff and Dr. Schaefer were alone in Zurich when plaintiff alleges that the first promise was made, could have been easily arranged.

Plaintiff committed a "Freudian slip" at the top of page 24 of his brief, when, after narrating his engagements with American companies, he states:

"From the foregoing, it is evident that plaintiff always insisted upon having an agreement for his own substantial compensation * * *."

He should have said that he always insisted upon having a *written* agreement, since that was the fact, as reflected by documents offered in evidence by him at the trial (X-1 through X-19).

Judge McGarraghy dealt with this lame excuse in paragraphs 1 and 2 of his Opinion, quoted in the appendix hereto. A reading of these two paragraphs leaves the

¹⁹ This was nearly a month before Mr. Charles Wilson accepted the "trusteeship".

impression that the trial court just did not believe plaintiff. A sentence extracted from each paragraph reflects the judge's thinking:

"Lack of a writing, in this situation, raises a serious question as to the existence of such an agreement.

* * *

"A simple writing between the parties would not have destroyed the needed secrecy."

Plaintiff cites his past relationship with the GAF matter as evidence (1) of the probability of the fee arrangement with Dr. Schaefer and (2) the reasonableness of the huge fee of millions of dollars for merely prevailing upon Charles Wilson to undertake the negotiating job.

On the first point, he argues that his fee with American business was always arranged expressly and in advance. But his motives were different in those cases from the instant one. He was not crusading or vindicating family pride and standing when he was acting as a broker for the purchase of GAF by American companies.²⁰ No moral significance could be derived from that kind of transaction, which was merely monetary and not one the Swiss could point to as a clear restoration of their property and rights.

On the other hand, the Schmitz-Charles Wilson proposal envisaged complete return to the Swiss of the vested property (J.A. 452-453). This position was constantly advocated by plaintiff who believed that "Partial compromise is a compromise with principle." (X-53; J.A. 517, 615, 829-830, 1048, 1049, 1050).

The Schmitz-Wilson position was advocated in plaintiff's first memorandum to Dr. Schaefer (X-41). Dr. Schaefer

²⁰ The efforts by plaintiff then were to accomplish the "Americanization" of GAF (see this term on page 26 of plaintiff's brief, which he defines as the Swiss selling their interest to an American purchaser.) John J. Wilson explained the mechanics at J.A. 113-115 and said he never believed "Americanization" was possible.

The "Americanization" referred to in the preceding paragraph is different from the "Americanization" on the first page of Schmitz's Memorandum to Dr. Schaefer of October 21, 1959 (X-41). Thus, Schmitz contemplated full return and a later disposition by the Swiss. This would enable Dr. Schaefer to install Schmitz in the GAF operations as he promised.

was more realistic, having stated his willingness to compromise as early as December, 1959 (X-54); his belief that a 75-25 percent settlement should be accepted (X-144); and he so testified (J.A. 1068).

Charles Spofford testified on his first deposition that Charles Wilson told him that plaintiff "has a very deep and long standing personal interest in the problem, and had, because of his father's position with Interhandel (*sic*)" (J.A. 1332). In his second deposition, Mr. Spofford made several remarks regarding plaintiff's attitude. At J.A. 1267-8, he testified:

"So I asked him, I tried to draw him out with some questions, which was not difficult, and he told me a little something of his background in the matter, his father and all of the stories which you are familiar with."

And, again, at J.A. 1273, Charles Spofford testified:

"His father had been President of General Aniline and Film, and he had a sense of mission about it which he communicated with everybody he talked to."

In discussing the suggestions which plaintiff imparted to him as he assembled notes to prepare a narrative of the case, Charles Spofford testified at J.A. 1284:

"No, all I am talking about specifically, he saw this thing through the eyes of his father, and he thought that anybody that dealt with Interhandel ought to be aware of his father's interest in the matter, and in vindicating his father, it was his effort to introduce matters of that sort, which I felt were irrelevant to the purpose I had in mind."

Finally, at J.A. 1305-6, the following testimony of Charles Spofford appears:

". . . You couldn't talk with Bob Schmitz very long without feeling that there was something elotional [*sic*] driving him in connection with this case."

"... He felt his father had been unjustly treated, and I think he felt that he had, therefore, a sort of mission to get this straightened out."²¹

In concluding his discussion as to the probability of an agreement, plaintiff stated that, "It would be ironic if plaintiff *insisted* upon receiving compensation from his old friend Dr. Sturzenegger and yet did not ask the same from Dr. Schaefer whom he had never before met." (emphasis supplied) This statement does not jibe with Dr. Sturzenegger's deposition (J.A. 1373-4) nor the "no mandate" letters which passed between plaintiff, Dr. Frey and Dr. Sturzenegger (X-32, 478).

As to the second point, namely, the reasonableness of the alleged fee, as compared with plaintiff's fee agreements with American companies, defendant believes that nothing need be added to the 9th paragraph of Judge McGarraghy's Opinion which is printed in the appendix hereto.

At page 26 of his brief, plaintiff contends there was a memorandum that he was to be paid by Charles Wilson out of the recovery. He relies upon his October, 1959 memorandum to Dr. Schaefer (X-41) in this connection, particularly paragraph (e) on page X-42, to the effect that the "trustee" should see that "all equities shall be satisfied." Plaintiff says that this means of payment of his fee was agreed to by Dr. Schaefer in his letter dated November 4, 1959 (X-106). Plaintiff's counsel showed Dr. Schaefer the October 26, 1959 memorandum and asked him if it stated his understanding with Mr. Schmitz. Dr. Schaefer replied:

"A. Well, there wasn't an understanding. He just promised that he would try to convince Mr. Charles Wilson." (J.A. 1037-1038)

²¹ Dr. Schaefer testified to the same effect at J.A. 1035 and 1193 and plaintiff's sense of mission is reflected in his writings e.g., X-381, 478. Compare the foregoing with the remark in plaintiff's brief (pp. 24-25) that "Nowhere in plaintiff's past history is there any suggestion that plaintiff would perform such services for mere love of the Swiss or for the honor of his father."

Plainly, Dr. Schaefer's letter of November 4th was merely to that effect. It is an absurd stretch of reasoning and imagination for plaintiff to place reliance upon these documents which are contrary to plaintiff's thesis that secrecy prevented any writing on the subject. By the most simple construction, the memorandum does not provide for payment of a fee to plaintiff.

Reliance is further placed by plaintiff upon a conversation in Paris between Dr. Schaefer and Charles Wilson, testified to by the latter, at J.A. 735. Charles Wilson quoted Dr. Schaefer as follows:

" * * * But he said that there would probably be claims—he didn't care whether it was \$30 million or \$20 million, the trustee could satisfy those various claims and that would be perfectly all right with him. * * * "

The following interrogation ensued:

"Q. Did you understand what he meant by "those claims?"

"A. I didn't at the time fully, no.

"Q. Did he ever explain it to you further?

"A. No."

Plaintiff attempts to "button this up" by the remark on page 32 of his brief, that the only possible claims were those of plaintiff and his father. He omits mention of the government's tax claim, the claims of the intervenors, or the value of Interhandel shares in the possession of the Attorney General, which claims were actually settled for \$24 million (J.A. 1237-1240). Had the remark been limited to the two Messrs. Schmitz, it would have been easily so stated.

There is overwhelming evidence to support the trial court's finding and its judgment must be affirmed.

III

The Trial Judge Correctly Held That Plaintiff Was Not Entitled to an Award of Damages

Pages 34-47 of the plaintiff's brief present the alternative theory that he is entitled to recover on an implied contract or equitable lien theory since he performed valuable services for Interhandel and at its request.²²

The record shows that plaintiff has not claimed and cannot claim compensation (express or implied) for his activities during the Sturzenegger period, December 1958-April 1959, for the simple reason that he was a volunteer without oral or written agreement who was seeking to achieve an employment status during this period (J.A. 161-163, 589, 1370-1371, 1372-1375; X-32, 478).

About April, 1959, plaintiff was advised by Dr. Frey that Dr. Sturzenegger had sold his Interhandel stock and any further negotiations regarding the trusteeship would have to be undertaken by Union Bank which controlled Interhandel (J.A. 185-186). Thereafter, Dr. Frey in a letter thanked Charles Wilson on behalf of the Sturzenegger group for his "willingness to study the possibilities of your personal intervention" (X-39). This letter and Dr. Frey's testimony make it abundantly clear that he was acting for Dr. Sturzenegger as his personal attorney and not on behalf of either Interhandel or Union Bank (J.A. 1369-1370).

There was a hiatus from Spring, 1959 until October 26, 1959 when Schmitz contacted Dr. Schaefer with the trusteeship proposal which Charles Wilson accepted on May 23, 1960 (J.A. 185-186, 193-195; plaintiff's brief, p. 12). The lower court found that plaintiff was entitled to reasonable compensation for his services during the October 26, 1959 to May 23, 1960 period but it was unable to award damages because "none of the . . . evidence concerned the

²² Plaintiff makes no distinction between the theories, his basic argument being that Interhandel was unjustly enriched at his expense and he is entitled to a fair proportion of the fund it received (Plaintiff's brief, p. 40).

reasonable value of plaintiff's services in procuring the services of Mr. Charles E. Wilson." (J.A. 52)

From June 1, 1960, just after Charles Wilson accepted the trusteeship, until December 31, 1961, plaintiff assisted the trustee in various matters and he was compensated at the rate of \$2,000 per month plus expenses for his services. This compensation resulted from Charles Wilson's request at the Paris conference that plaintiff be paid his expenses and a fee (J.A. 1061, 1179) and the exchange of correspondence described above. This period was the subject of the second count of the complaint, the *quantum meruit* claim, which was abandoned without explanation by the plaintiff when the trial began (J.A. 88, 396-399), a fact duly noted in the court's Opinion (J.A. 31). While plaintiff's brief contains extended discussions of events which transpired in 1962, he specifically made no claim for services after December 31, 1961 (J.A. 399-400).

On the basis of the pleadings and the evidence, the lower court found that relief could be proper under any of three theories (J.A. 32): (1) Express contract; (2) implied contract to pay a reasonable compensation, and (3) relief in quasi-contract to prevent unjust enrichment of the defendant. The court, after an examination of the evidence, found:

"It is certainly reasonable for the court to find that the facts of this case entitle plaintiff to relief on either theory [implied contract theory or quasi-contract theory]. On either theory, plaintiff has shown that he is entitled to reasonable compensation for his services." (J.A. 48)

This conclusion related only to the period from October 26, 1959 through May 23, 1960. Thus, the court after noting that plaintiff was proceeding only with Count I for the compensation for procuring the services of Charles Wilson (J.A. 31), found that no evidence as to the value of the services of the plaintiff "in procuring the services of Mr. Charles E. Wilson" had been adduced (J.A. 52).

I. Plaintiff Failed To Prove Damages.

At trial plaintiff proceeded on the theory that the reasonable value of his services was to be determined upon the basis of the result, i.e., a percentage of the amount recovered by defendant and he continues to advocate that position in his brief. Plaintiff offered no evidence whatsoever as to the reasonable value of his services. This was made clear during argument on the post-trial motion:

"The Court: So, we do have a situation, if I may interrupt you, we do have a situation where for a period of time between the time that Mr. Schmitz went to work on this project and the time Mr. Wilson was appointed, accepted the trusteeship, Mr. Schmitz rendered some services.

"Have you offered any evidence as to the value of those services?

"Mr. O'Donoghue: No, we have not, because we consider that they were related to the result . . .".
(J.A. 1428)²³

The evidentiary void required the lower court's finding that it was compelled to deny recovery because of the lack of evidence (J.A. 51, 52).

The cases plaintiff cites do not require a different ruling. It is uniformly required that there must be evidence of record which affords a reasonable basis for computation to support an award of damages. In the instant case, no evidence whatsoever was adduced. In a comparable situation, *Souza v. Corvick*, — U.S. App. D.C. —, — F.2d —, (decided December 10, 1970, No. 22930), the court followed this rule. It was reviewing a directed verdict in favor of the defendant in a suit wherein the plaintiff proved her house had developed cracks and other injuries after a sewer was constructed near her property. The trial court pressed plaintiff's attorney as to what evi-

²³ Plaintiff's brief argues that there were several "indicia" of the value of his services. Each is clearly irrelevant to the issue, e.g., the alleged rise in stock prices benefitted the stockholders, not defendant.

dence there was of damage to the building. In explaining why there was no evidence, Counsel stated:

“This is one of these situations in life, your Honor, when you sometimes can’t get exact evidence.”

When it became apparent that there was no evidence, except with regard to the heating plant which had been repaired and a bill submitted, a verdict was directed for the defendant. This Court reversed for new trial with the direction that the damages to be awarded “may not exceed the amount paid the heating contractor”. In Footnote 6, this Court held that on retrial the appellant could not “introduce new evidence as to the amount of damage to her realty.” (emphasis added)

Palmer v. Connecticut Ry. & Lighting Co., 311 U.S. 544, 85 L.Ed. 336 (1941), laid down the rule to be applied here, namely, that certainty as to the amount of damages requires that the evidence be such as to provide “a basis for a reasoned conclusion”. (311 U.S. at p. 561)

Here, no evidence of the reasonable value of plaintiff’s services was adduced and there was, therefore, no basis for a reasoned conclusion by the trial court. Accordingly, it correctly concluded:

“The court is compelled to deny recovery in this case at bar. There is no evidence as to the value of the plaintiff’s services.” (J.A. 51)

2. Interhandel’s Conduct Did Not Make It Difficult For Plaintiff To Prove Damages

At pages 41-45 of his brief, the plaintiff argues that defendant’s wrongful conduct gave rise to his difficulty in proving damages. This ludicrous argument has two steps. First, that defendant wrongfully prevented the trustee from securing a settlement and second, that if the trustee had been allowed to continue, the trustee would have accomplished the settlement and paid him and suit would not have been necessary (Plaintiff’s brief, page 41).

Plaintiff assumes these facts to be established despite the court's finding that it would require "pure speculation" to determine the part the trustee's efforts contributed to the ultimate result which was accomplished (J.A. 39), and despite the fact that Charles Wilson had no knowledge that he was to pay plaintiff a fee from the recovery for procuring his services (J.A. 981).

But even if Interhandel did improperly terminate the trusteeship, this would not effect plaintiff's ability to prove damages. Plaintiff does not argue that evidence was lost or otherwise became unavailable because of defendant's allegedly improper actions. To the contrary, he relies on the settlement obtained by Interhandel to measure his damages. Insofar as *proof* of damages on the theory of unjust enrichment is concerned—it simply makes no difference whether Charles Wilson or Dr. Schaefer accomplished the settlement. For this reason each of the cases and authorities cited at pages 42-45 of plaintiff's brief is inapposite.

In addition, none are contrary to the position asserted by Interhandel. It is elementary that awards of damages cannot be based on guesswork. While plaintiff cites many authorities, most of which involve fraud or tortious conduct, to the effect that mathematical precision is not required in the ascertainment of damages, none of them will support an award where, as here, there was *no evidence* as to the reasonable value of plaintiff's services. For example, plaintiff cites with an asterisk²⁴ the treble damage anti-trust case of *Bigelow v. RKO Radio Pictures, Inc.*, 327 U.S. 251, at 264-265 (1946). The quotation therefrom at page 42 of plaintiff's brief would be more representative of the law if the sentence preceding the quotation had been included. It reads:

"In such a case, even where the defendant by his own wrong has prevented a more precise computation,

²⁴ A case he principally relies on.

the jury may not render a verdict based on speculation or guesswork. But . . . ”²⁵

Plaintiff's other authorities are to the same effect. Each requires that the *evidence* show the extent of the damages at least as a matter of reasonable inference.

3. Plaintiff's Efforts Did Not Create the Fund and There Was No Unjust Enrichment of Interhandel

It is recognized that contracts may be either express, implied in fact or implied in law. Implied in law contracts are also called “constructive” or “quasi” contracts and the terms “restitution” and “unjust enrichment” are modern terms which in the minds of some writers have largely supplanted the former designation. *Roebeling v. Anderson*, 103 U.S. App. D.C. 237, 241, 257 F.2d 615 (1958). In *Roebeling*, this court in identifying the causes of action alleged stated:

“Roebeling appears to list unjust enrichment as a theory of recovery different from quasi-contract. Our understanding is that unjust enrichment is a basis upon which quasi-contract recovery can be obtained. See 1 Williston, Contracts 15 (3d ed. 1957).” (103 U.S. App. D.C. at p. 239)

In the second *Roebeling* case, 109 U.S. App. D.C. 402, 403, 288 F.2d 386 (1961), the court, citing *Bailis v. Reconstruction Finance Corp.*, (3rd Cir. 1942) 128 F.2d 857, said that a plaintiff, in order to establish unjust enrichment, must show that the benefit was unjustly retained. See also: *Herrmann v. Gleason*, (6th Cir. 1942) 126 F.2d 936.

Since the heart of plaintiff's argument is unjust enrichment, it was incumbent on him to prove it would be unjust for Interhandel to retain all of the settlement fund as against his claim. The short answer to this argument is the lower court's finding that there was no unjust enrichment as a result of the settlement. It found:

“This obviously is pure speculation. No agreement had been reached during the period when Mr. Charles

²⁵ The Supreme Court discussed the evidence and concluded there was evidence to support a verdict for damages (327 U.S. at 266).

E. Wilson and his attorney, Mr. Spofford, were actively engaged and the record is devoid of any evidence from which a determination can be made of the part which their efforts contributed to the ultimate result which was accomplished." (J.A. 39)

Despite this clear holding, plaintiff's attorney, during argument on the post-trial motion, continued to urge the unjust enrichment theory and the court interrupted, saying (J.A. 1412):

"THE COURT: I don't have any recollection of having found the services rendered by Mr. Schmitz—

"MR. O'DONOGHUE: —quasi—

"THE COURT: (Continuing)—had any causal relation with the enrichment of Interhandel. Do I make that clear?

"MR. O'DONOGHUE: I see what you mean, that his services did not contribute to the result?

"THE COURT: Not the result of.

"MR. O'DONOGHUE: I don't know that your Honor found that they did not.

"THE COURT: I think I did. I think that's a reasonable interpretation of it. I found he rendered a service, but I don't think I found those services contributed in any way to the settlement that was ultimately negotiated.

"I'm sorry for interrupting you; it was simply to—" ²⁶

As discussed above, there is substantial evidence to support the court's finding. Accordingly, plaintiff failed to prove his theory of unjust enrichment and he was properly denied an award of damages.

4. The Statute of Limitations Bars Recovery Under an Implied in Fact Contract Theory

An express or implied in fact contract is the same in legal effect, the former being expressed by words (written or oral); the latter by the conduct of the parties.

It is well settled that the Statute of Limitations bars suits on implied contracts which are brought more than

²⁶The lower court reaffirmed this statement at J.A. 1427-1428.

three years after the cause of action accrues. 12 D.C. Code, Section 301 (1967 ed.). In *Howard University v. Cassell*, 75 U.S. App. D.C. 75, 126 F.2d 6 (1942); cert. den. 316 U.S. 675, 86 L.Ed. 1749; reh. den. 316 U.S. 711, 85 L.Ed. 1777, an architect was suing on an express agreement; in *quantum meruit*; and for the value of his services which were accepted by the University. The Court held:

“The statute begins to run on the conclusion of the service, where it is not required by agreement or statute that an audit must be made before payment shall be due.” (75 U.S. App. D.C. at p. 78)

Here, defendant raised the statute of limitations defense and the court found (J.A. 31):

“This suit is not barred by the Statute of Limitations. The fund out of which plaintiff claims he was to be paid became available in April, 1965. Suit was timely commenced January 10, 1967.” (Footnote omitted)

The Opinion makes it clear that this finding applied only with respect to the express contract and unjust enrichment-equitable lien grounds for recovery. Moreover, as a practical matter, it was only with regard to those theories that the plaintiff could claim he was to be paid from the fund. There is no evidence that the parties' conduct was such that it can be inferred he was to be compensated from the fund for the reasonable value of his services.

With regard to the period during the trusteeship, the plaintiff made demand for his services, claiming the amount of \$112,000 was “due and payable” (X-265). He even executed a draft in his favor for this amount, the draft being rejected by defendant (J.A. 605-606; X-429, 430). Since these actions occurred in early 1962, it is clear that these claims are barred.

An implied in fact contract claim for plaintiff's services during the pre-trusteeship period from October 26, 1959 through May 23, 1960 is also barred. If there was no express contract there was no agreement for payment from the settlement award. Surely, if plaintiff rendered valuable

services during this period for which he was entitled to payment, such payment was due from the general funds of defendant whether or not a settlement was ever accomplished or whether or not his services resulted in creation of the fund. His claim for this period accrued when Charles Wilson accepted the trusteeship in May, 1960 and it is barred by the Statute of Limitations.

IV

Plaintiff's Motion for Reconsideration or, Alternatively, To Open the Judgment To Take Additional Testimony Was Properly Denied

A motion under Rule 59(a), Federal Rules of Civil Procedure, is addressed to the sound discretion of the trial court and the moving party must show: (1) due diligence timely to obtain the "new" evidence and (2) the probability that the newly discovered evidence would change the result. *Knight v. Hersh*, 114 U.S. App. D.C. 198, 313 F.2d 879 (1963).

Plaintiff's motion contended that sufficient proof of damages was adduced during the trial and it continued to maintain that the court should fix damages on "the fair value of the services based on the benefits conferred by plaintiff's activities to the defendant." (J.A. 56) This rationale apparently led to plaintiff's deliberate decision not to present evidence as to the value of his service (J.A. 1428).

The motion did not comply with the requirements of Rule 59. Its thrust was basically a request that reopening be permitted *if the court thinks insufficient evidence was presented* (J.A. 56). No showing of diligence was attempted and the motion on its face was deficient in that it did not even constitute a serious effort to persuade the court that additional evidence existed which would probably have changed the result. Plaintiff tendered an affidavit by Charles Wilson and counsel stated that "[P]laintiff *expects to obtain* expert testimony from the financial community in New York City bearing on the issue [value of plaintiff's

services].” (J.A. 75, italics supplied.) This statement, which was included in the “Points and Authorities,” did not even take the trouble to tell the court of what the expected “expert testimony” would consist. The most that was stated was that it would *bear upon* the value of plaintiff’s services. Plaintiff had ample time both before and after the trial in which to develop such evidence and yet he failed to identify a witness or to describe the proposed testimony. Judgments would never be *final* if such representations could be the basis for re-opening a case. See Judge Keech’s remarks in *Rue v. Fuez Construction Co.*, (D.C.D.C. 1952) 103 F.Supp. 499 at page 502 *et seq.*

The following parts of Charles Wilson’s affidavit are incredible in the face of the case which plaintiff undertook to prove at the trial (J.A. 78):

- (1) That the fixing of the amount of plaintiff’s “fees” was in affiant’s sole discretion.
- (2) That it was affiant’s “firm judgment” from April 30, 1960 “that the reasonable value of the *said services* was not less than five percent (5%) of the sums recovered”; and that affiant would have paid plaintiff not less than 5%. (Italics supplied.)

In the “Additional Points and Authorities” the following appears:

“Testimony was presented at trial that the trustee had been advised that plaintiff had an agreement with the Swiss whereby they would pay him 5% of the settlement (Tr. 1023) *sic* [1223] even though the trustee *did not then* recall where or under what circumstances the money was to be paid.” (J.A. 66, italics supplied.)

Is the Charles Wilson affidavit offered to support the existence of newly discovered evidence? Hardly! Plaintiff does not use the term, but suggests that affiant did not recall at the trial that which he now swears to. But the affiant

does not swear and could not truthfully swear that he did not recall, at the trial, that which he now states in his affidavit has always been clear in his mind.

There was not one word at the trial that Charles Wilson had the "sole discretion" to fix the amount of plaintiff's "fee." All of plaintiff's theories were contrary to such an idea. Moreover, according to the affidavit, it has *always* been his "firm judgment" that the reasonable value of plaintiff's services was 5%. If this was *always* his firm judgment, it is not newly discovered, nor did he testify to that effect at the trial.

Moreover, the affiant did not define "the said services"—either in the affidavit or at the trial. Were the services ones which encompassed October, 1959-May, 1960, or December, 1958-May, 1960, as mentioned on pages 4-5 of the "Additional Points and Authorities"; or for procuring affiant to act as "trustee"; or those rendered during the period June, 1960-December, 1961; or extending into 1962 until affiant formally resigned? The evidence showed that Charles Wilson rejected out of hand, on cross-examination, that plaintiff's fee was tied merely to procuring affiant to undertake the "trusteeship" (J.A. 980-981). Thus, affiant was not treating plaintiff's compensation as a finder's fee.

In the abandoned second count of his complaint, plaintiff fixed the reasonable value of his services up to December, 1961, at \$150,000. True, this count was withdrawn, perhaps for tactical reasons, but it was a figure which he perpetuated throughout three successive complaints filed in the court below. Despite this, Charles Wilson swears for the first time in the affidavit that in his "firm judgment", which was formed on April 30, 1960, the reasonable value of plaintiff's "said services" was 5% of \$145,000,000 or \$7,250,000. We wonder whether Mr. Wilson realized that for a maximum period extending from December, 1958 to November, 1962—about four years, he was allocating to plaintiff an annual income rate of \$1,812,500, while during that same era

a \$200,000 annual salary for the President of General Electric Company would have taken over 36 years to aggregate \$7,250,000.

The foregoing fully demonstrates that the motion to reopen was properly denied.

CONCLUSION

The essential findings of the court below are fully supported by the record and since it cannot be said they are clearly erroneous, the judgment below must be affirmed.

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January, 1971

APPENDIX

Excerpt From Opinion of the Court Below

"1. The alleged contract was not in writing. The court realizes that it was not necessary that such a contract be in writing. Yet, careful business men (in which group both the plaintiff and Dr. Schaefer belong) invariably memorialize their agreements in writing. This would be the case especially when millions of dollars were at stake. Lack of a writing, in this situation, raises a serious question as to the existence of such an agreement.

"2. Plaintiff contends that the extreme secrecy surrounding the entire Interhandel affair precluded any writing. This is highly questionable. In spite of the alleged secrecy, there was prolific correspondence between the plaintiff and Dr. Schaefer on many topics. A simple writing between the parties would not have destroyed the needed secrecy.

"Surely, after Mr. Wilson's acceptance of the trusteeship became public, in May, 1960, there was no need for secrecy.

"Also, it is noteworthy that all of plaintiff's agency agreements with American corporations from 1950 to 1958 had been in writing.

"3. It was not until January 17, 1962 (almost 20 months after Mr. Wilson's acceptance of the trusteeship, and more than 26 months after the alleged promise was made, and well after Mr. Wilson's activities had ended), that the plaintiff, in writing, alluded specifically to the alleged 5% agreement.

"For one to wait so long, after what is alleged to have been a very specific promise, before specifically referring to that promise, seems unusual.

"4. Plaintiff was compensated, at \$2,000.00 per month, for services rendered Interhandel after Mr. Wilson accepted the trusteeship. This compensation continued from June 1, 1960 through December 31, 1961. In some of the plaintiff's correspondence with Dr.

Schaefer concerning this compensation, he made vague, general statements about his "capital interest" in the eventual settlement. Such vague statements are not those of a man who has received a firm promise of a 5% commission.

"5. The testimony conclusively showed that no one else had ever heard of the 5% agreement until plaintiff's January 17, 1962 letter. Even Mr. Charles E. Wilson, the trustee, who was one of plaintiff's main witnesses, admitted that the plaintiff never specifically told him that plaintiff was entitled to the 5% commission at the moment Mr. Wilson accepted the trusteeship.

"6. [Quoted in text at page 26]

"7. As shown above, plaintiff's family was very deeply involved in Interhandel's history. Plaintiff, time and again, claimed that his primary concern was to force the United States Government to correct what he considered to be a grievous injustice to his family and to the Swiss. Such evidence shows the existence of motives other than monetary for plaintiff's actions.

"8. Plaintiff claims that he was offered the 5% commission if he could convince Mr. Charles E. Wilson to act as Interhandel's agent. To be sure, the whole Interhandel affair was unique and unprecedented. Such situations do require something more than the usual mode of operating. And yet, it strains credulity to believe that such a large commission was offered to do so little.

"The idea of a trusteeship had been broached to Mr. Charles E. Wilson at least ten months prior to plaintiff's October, 1959 meeting with Dr. Schaefer. It is true that Mr. Wilson had not accepted the trusteeship in October, 1959, yet he had been considering it for some time. He insisted on being convinced of the validity of the Swiss claim. This plaintiff attempted to do. Plaintiff gave extensively of his time and energies. He spent many hours providing background information on the entire Interhandel controversy and the various Swiss personalities involved.

"Mr. Wilson also made it clear that he would not act for the Swiss unless his own government gave at least tacit approval.

"All of this had transpired prior to plaintiff's October, 1959 meeting. While it cannot be said that Mr. Wilson was totally committed to accepting the trusteeship in October, 1959, it also cannot be said that the idea was totally foreign to him. In other words, after October, 1959, it is highly questionable whether plaintiff had to do much convincing of Mr. Charles E. Wilson.

"9. Prior to this, plaintiff had received generous offers from various American corporations to act as their agent in procuring GAF assets. But the largest offer was for \$900,000.00 from Shields & Co. if plaintiff's negotiations with Interhandel brought about a sale of GAF.

"It is not reasonable that plaintiff should be offered over \$6,000,000.00 (5% on the \$121,000,000.00 settlement) for his activity as a *finder* of an agent when he was offered \$900,000.00 by another corporation for his activity as the *primary agent* and primary negotiator in securing GAF assets.

"In sum, the court is convinced that there is no evidence—except plaintiff's *ipse dixit*—of the existence of an express oral contract to pay a 5% commission. Plaintiff has failed to prove an express contract." (J.A. 42-46)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24,600

ROBERT A. SCHMITZ,

Appellant,

v.

SOCIETE INTERNATIONALE POUR PARTICIPATIONS
INDUSTRIELLES ET COMMERCIALES, S.A., also known
as INTERNATIONALE INDUSTRIE UND HANDELSBE-
TEILIGUNGEN, A.G.,

Appellee.

APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANT

United States Court of Appeals
for the District of Columbia Circuit

FEB 10 1971

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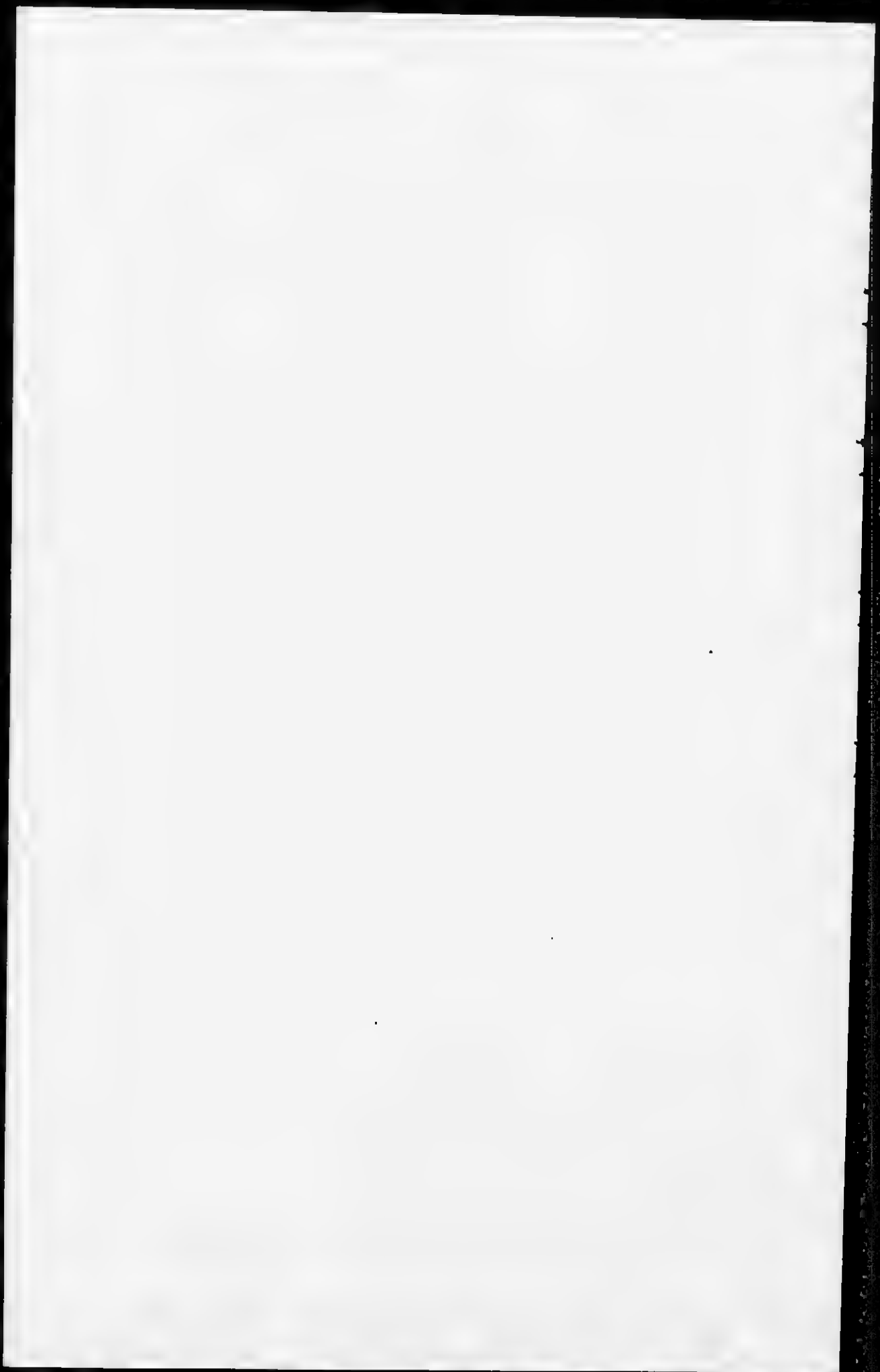
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ARGUMENT

I

INTERHANDEL'S BRIEF SEEKS AVOIDANCE OF DEFENDANT'S OBLIGATION TO COMPENSATE PLAINTIFF BY IGNORING ITS EXPRESS AND IMPLIED PROMISES AND BY ATTEMPTING TO EXCUSE ITS BREACH OF THE TRUST POWERS ON GROUNDS OF EXPEDIENCY

A. The Counter-statement of the Case Fails to Reflect the Weight of the Evidence and Distorts the Total Image to be Obtained from Consideration of the Entire Record

Defendant's Counter-statement of Facts tries to put a construction on the record of this case that is inherently incredible. So determined is it to denigrate the plaintiff and the trustee, Charles E. Wilson, that it leaves one wondering if the idea and the efforts were so despicable, how the great Swiss bankers could have been so captivated by the trusteeship concept and how the plan and efforts of the plaintiff, trustee and counsel were so quickly followed by success.

Defendant doesn't know whether to credit success to the effects of the interminable law suit as counsel would have the Court believe, or to the "coup" of Dr. Schaefer which he himself regarded as determinative. Each, in seeking the glory of success, minimizes the other's part. Each, in playing down the other's part, is no doubt right. They are only agreed in their disregard of the efforts of plaintiff, Charles E. Wilson and his counsel, but the record makes evident that it was the trusteeship which turned failure into success. This truth was brought out at trial not merely by plaintiff's witnesses, but by the vast physical record and the testimony of defendant's officials themselves.

Plaintiff accepted the burden in his principal brief of establishing that the trial court's Findings of Facts and Conclusions of Law were not based on a full and fair consideration of the whole record. Both parties recognize, of course,

the principle that "The question for the appellate court under Rule 52(a) is . . . whether 'on the entire evidence [it] is left with the definite and firm conviction that a mistake has been committed.'" (Appellant's brief, p. 22; Appellee's brief, p. 25)

It is for this reason that the rather formidable record has been brought to this Court virtually in its entirety. It is thought that upon a consideration of this "entire evidence" this Court will form that "definite and firm conviction". Surely the Court cannot have proceeded thus far in the consideration of the trial court's Findings and these briefs without feeling the necessity of examining the record fully to determine what are the actual facts, together with the significant inferences that should be drawn therefrom. The statement of facts in the plaintiff's main brief is markedly different from the trial judge's Findings. This is perhaps only to be expected. But the intriguing thing is that the defendant cannot bring itself to accept and support those Findings. It says, in effect, that although the trial court was correct in its ultimate conclusions (as what appellee would not) yet the facts justifying those conclusions are not as set forth by that Court, but are those facts that are set forth in such detail for some 40 pages of its brief. Its formal "Counter-Statement" of the case requires no less than 17 pages. Defendant recognizes that in view of plaintiff's Statement of Facts, the District Court's decision must fail unless bolstered by a completely new version of the record.

Thus, this Court is presented with the question of which of those "Statements" is supported by the record. It is the purpose of this Reply Brief to show in the limited space available how fallacious is Defendant's Statement in this respect. Defendant's characterization of plaintiff's recitation as containing "distortions", "misstatements" and "salient deceptions" should not dissuade this Court from making a close examination of the Counter-statement. Many more than the total pages available in this brief could profitably be spent in refuting the appellee's counterstatement of

facts; those that make no reference at all to the record; (e.g., pp. 19, long paragraph; p. 22, third paragraph); those with mistaken attributions (e.g., p. 7, there is no evidence that the Schmitz family "felt disgraced"; p. 9, there is no evidence of plaintiff's "divided loyalty"; p. 11, no evidence that Charles E. Wilson was showing "a great interest" in 1959); and those that incorrectly reflect the record (p. 12, plaintiff was not in Switzerland in October, 1959 on behalf of Food Machinery Co.; p. 14, X-272 did not require the trustee to consult with Interhandel; p. 16, the trustee made much progress during 1960;) but there is room for pointing out only some of the more egregious errors of this kind. Enough will be given to establish the misleading character of the counterstatement and thus demonstrate how necessary it is for this Court to examine the voluminous record in detail. Only in this way can there be a full appreciation of the extensive and valuable services rendered by plaintiff to Interhandel at the urging of Dr. Schaefer.

B. The Reasonableness of the Agreement to Compensate Plaintiff is Made Manifest by Reference to the Circumstances Surrounding the Swiss Attempts to Secure the Return of their Vested Asset

When plaintiff divulged his trusteeship plan in 1958 to Dr. Sturzenegger, and in 1959 to Dr. Schaefer, Interhandel's hopes for obtaining the return of its interest in General Aniline and Film Corporation had reached their nadir. Although the return suit which had been filed in 1948 had been resuscitated following a prolonged period of time during which it had been under dismissal (J.A. 103-104). Def. Ex. No. 18 (a) (b) (c) (d)), the Swiss were aware that their prospects for success over the years had grown steadily worse. From the mere protective sequestration of foreign property that the seizure had been at the outset, which would be promptly returned to the Swiss owners at the end of the war, the property had acquired not only

so-called "enemy taint"¹ in the course of years, but Interhandel had become stigmatized as a front for I. G. Farben. Rightly or wrongly, by about 1949 that huge German industrial complex had become associated in the minds of many Americans with the stench of slave labor and vile experimentation in concentration camps. Thus, many of the lawyers in the Department of Justice were not only fighting to conserve government property, but to vindicate and avenge what they considered crimes against mankind.

And they were fighting successfully. Attempts to recover its property by Interhandel had been thwarted at every turn from the courts of the United States to the Court of International Justice. Dr. Sturzenegger, who had long controlled Interhandel, was so discouraged that in 1959 he sold most of his substantial stock interest and the new board of directors could not perceive any basis for hope. They did not trust their trial counsel, thinking, not without reason, that their legal position, and certainly the actual value of their seized asset, had worsened in the course of this endless litigation. Moreover, the Hague Court decision in 1958 convinced them that any relief from that body would be a long time off.

In the depths of defendant's despair, plaintiff brought hope. Here was an American who had faith in their cause, who believed in their rectitude and was convinced, indeed knew from his lifelong intimacy with GAF and Interhandel that the widely held belief of "enemy taint" was false. Furthermore, he held out the hope that he might by his fervor, reason and conviction, persuade a uniquely qualified American to act on their behalf. They recognized that Charles E. Wilson was an American statesman who stood above faction enjoying, because of his selfless patriotism, the trust of American Presidents of both political parties. (See X-377-78) If he could be persuaded to undertake their cause, success would be practically certain.

¹See *Uebersee Finanz-Korp. v. McGrath*, 343 U.S. 205 (1952).

If these are not the facts, how else can the enthusiasm of Dr. Schaefer and his colleagues be explained? How else can the skyrocketing of Interhandel stock on the Zurich bourse be accounted for? What other significance can be attached to the great spate of transatlantic wires, telephone calls, correspondence and visits than that the Swiss recognized in the accomplishment of this plan their salvation? What else is the meaning of Dr. Schaefer's allowing the plaintiff to dictate his letters, draw up, without cavil, the terms of the trusteeship and the resolutions of the board of the great Interhandel corporation? What other significance can be attached to Interhandel's ratifying fully all of the powers of the trustee by resolution of its executive board before Charles E. Wilson had even tentatively indicated a willingness to accept the trusteeship?

Is not all this proof of appellee's willingness to do anything plaintiff suggested to attain this great goal? Is it not the most eloquent corroboration of the promise to pay plaintiff a mere 5% of any recovery? Is not a contingent fee of that small fraction more remarkable as minuscule than generous? Would greedy Swiss bankers whose desperate cause had suddenly become dazzlingly sperate, balk at promising so small a reward to one who could make that chance a reality?

C. Plaintiff Rendered Valuable Services to Interhandel at Its Urging and He is Entitled to Compensation Therefor.

1. Plaintiff was Exhorted by Dr. Schaefer to Effectuate the Trusteeship

a. Plaintiff was not a volunteer

Although Dr. Schaefer claimed at trial that at all times plaintiff was merely a volunteer who sought to aid in the effectuation of a successful resolution of Interhandel's long drawn-out return suit, defendant declares that plaintiff was a volunteer only during what it calls "the Sturzenegger period, December 1958 - April 1959". By implication, Interhandel apparently is abandoning the conten-

tion that plaintiff's interest in the matter was only to "re-store" the good name of his father and to obtain the return of GAF as a "matter of moral principle". (Def. Br. p. 12) Certainly, Dr. Schaefer's own testimony, quoted at page 30 of defendant's brief, is inconsistent with the claim that no promise ever was made to compensate plaintiff. What other meaning can the last portion of the quoted statement have other than that a promise of compensation was made? Dr. Schaefer's words are:

"I told him that, as his principal was that we should get back General Aniline fully, that in this case it would go without saying that if there would be justified claims from his family side, from his father's side, they would certainly be honored and that also for him, there could certainly be a place or a commission or work in this General Aniline Film firm."

(J. A. 1178)

A little later in his testimony Dr. Schaefer acknowledged that a promise of compensation was made to plaintiff (J.A. 1182) and that it was Interhandel's obligation to compensate plaintiff "the moment he worked in our interest". (J.A. 1184) Dr. Schaefer also admitted that he "enlisted" plaintiff's cooperation in the Swiss effort to secure the return of their vested asset. (J.A. 1193)

The fact is that plaintiff was never a volunteer and that at all times while endeavoring to effect a resolution of the GAF controversy, he was encouraged by the Swiss to expend his talents, time and effort on their behalf and was motivated by the reasonable expectation of receiving a substantial compensation for his valuable services. In light of plaintiff's unique qualifications as perhaps the one expert in the world on the history and consequences of the GAF seizure, the recognition of his expertise by numerous American businesses, the actual employment offers made to him by these businessmen interested in acquiring GAF, the numerous trips made by plaintiff to Switzerland to confer with the Swiss

and the extensive correspondence and importuning of plaintiff by the Swiss to bring about the Wilson trusteeship, any claim that plaintiff was a volunteer in this matter is ludicrous.

The defendant's effort to convert plaintiff's zeal and willingness to work for the return of the seized property into a sham claim that he was a mere volunteer is pointed up by a reading of plaintiff's letter of April 23, 1959, cited by defendant on page 30 of its brief as support for this thesis. In that letter plaintiff points out that notwithstanding his financial hardships, he stands willing to continue to expend his talents, time, effort and what was left of his personal wealth on behalf of the Swiss and to postpone his own compensation and reimbursement until the seized property was returned. To be sure, plaintiff does mention to his old and close friend, Dr. Sturzenegger, (J.A. 427, 434) that he neither had nor wanted any "mandate" or other guarantee from either Dr. Sturzenegger or Interhandel (X-478, 480), but this must be considered in the context of a letter in which plaintiff restates his belief that he will be amply compensated by the Swiss. Plaintiff testified explicitly that he had no fixed compensation agreement with Dr. Sturzenegger (J.A. 388) for he had every reason to expect a suitable compensation from Interhandel as long as Dr. Sturzenegger had a powerful voice in its affairs. (See, e.g., J.A. 558, 569) That he did have such a voice on April 23, 1959, is clear from Dr. Schaefer's testimony at J.A. 1024-26. See also J.A. 520, 535, 552-53, 1392; X-37) Moreover, such an expectation of compensation from Interhandel through the good offices of Dr. Sturzenegger was fully to be expected since Dr. Sturzenegger was helping plaintiff survive financially during this period with interest-free cash advances from the Sturzenegger Bank in Basel. (J.A. 552-53, 556-57, 559-60, 561, 585, 587; X-408)

- b. Defendant's Exhibit No. 1 does not support Interhandel's claim that plaintiff rendered his services Gratuitously

Both the District Court in its written opinion denying relief to plaintiff on his theory of express contract and defendant in its brief in this Court place heavy emphasis on one phrase appearing in a letter plaintiff wrote to his friend, Dr. Sturzenegger, on July 13, 1960, designated Defendant's Exhibit No. 1. Defendant chides plaintiff for not attempting to explain this document to the trial judge. (Brief, p. 15) Defendant, of course, had ample opportunity at trial to examine plaintiff regarding its contents but he intentionally declined to do so, presumably content with his success in creating a "red herring" that could be used to denigrate plaintiff and his claim. Since both the District Court and the defendant failed to consider this letter in proper context, and since it did, indeed, divert the trial court from the real issues in the case, plaintiff does wish that he had testified regarding its contents. Plaintiff urges the Court not only to read this letter but also to consider the phrase "I had no deal" in the context of the sentence and paragraph in which it was written and in the context of the time and circumstances when the letter was composed.

The full paragraph of the July 13, 1960 letter in which the aforementioned phrase appears, reads as follows:

"As you know by now, Dr. Hugo Frey called both the Trustee and myself during his recent stay in New York, just prior to his return to Switzerland. I asked him to report to you as to the substance of our talk together as it was possible for me to lunch with him the day he left. Dr. Frey is a meticulous gentleman who most certainly means well. He appeared however inordinately concerned about my personal welfare and affairs, and seemed worried that, whereas had this matter eventuated in 1958-59, I would have

been assured good treatment, on the other hand, perhaps Dr. Schaefer and Union Bank would be otherwise. I told him that, although, I had no deal, I was not primarily concerned here at the moment, but that there was a job to be done, independently, by an independent Trusteeship, for the good all around to end this sad case properly. Enough said here."

(X-381)

It can be seen from the face of that paragraph that it was written by plaintiff with considerable annoyance. Plaintiff did not appreciate Dr. Frey's professed deep concern, and questions, about his financial situation. Plaintiff knew what Frey did not have any right to know—that Interhandel had expressly authorized the trustee to set aside \$20 million to \$30 million out of the proceeds of the expected sale to compensate plaintiff and all other claimants against the fund. He considered Dr. Frey to be prying into his personal affairs and the clear indication of the sentence in which the phrase appears is that plaintiff sought to quickly terminate the line of questioning. Moreover, in view of plaintiff's sensitive position in the settlement negotiations (See J.A. 58, 291) there is little wonder why plaintiff would hesitate to discuss his financial interest in the matter with persons not directly involved in the matter.

Plaintiff "was not primarily concerned here at the moment" because he had successfully established the trusteeship upon which he rightly relied. As a third party beneficiary of that trust agreement² he was content to rely upon the trustee to compensate him for his services in conceiving and bringing about the trusteeship. Defendants Exhibit No. 1

²See *Marranzano v. Riggs National Bank* 87 U.S. App. D.C. 195, 184 F.2d 349 (1950); *Aetna Casualty & Surety Co. v. Kemp Smith Company*, 208 A.2d 737 (D.C. App. 1965).

confirms this. Plaintiff emphasizes the independence of the trustee and his endeavor to resolve this "sad case" for the good of *all* concerned.

The Frey visit and the July 13, 1960 letter were written at a time when, in fact, plaintiff did not have any arrangement ("deal") covering his "interim services" to the trustee. His 5% agreement with Dr. Schaefer was fully performed by plaintiff when he secured Charles E. Wilson's acceptance of the proffered trust. Plaintiff had no formal agreement with anyone regarding payment for what came to be known as "interim services" until at least September 19, 1960 (X-137, X-151, X-157) and did not receive his first payment on account of these services until October 25, 1960. (X-165) Accordingly, it was perfectly truthful for plaintiff to respond to Dr. Frey's questions about his financial circumstances by saying that although he "had no deal" at that time, he "was not primarily concerned here at the moment" because he had successfully established the trusteeship, thereby fully performing his side of the October 26, 1959 agreement, was entitled to be paid by the trustee upon settlement of the case, and was expecting to receive his 5% commission "in the not too distant future". (X-383)

2. *The Record Contains Ample Corroboration of Dr. Schaefer's Promise*

Interhandel, in its brief, and Judge McGarraghy, in his opinion, erroneously state that there is no corroboration of Dr. Schaefer's promise to compensate plaintiff. There is, in fact, corroboration of the promises by Dr. Schaefer both in writing and in his testimony. Although Dr. Schaefer testified that there was no discussion of compensation to plaintiff either at Zurich or in Paris, his letter of August 30, 1960 quoted at page 16 of defendant's brief, admits that such promises were made. And in his testimony (J.A. 1178) he said that "also for [plaintiff], there could certainly be a place or a *commission* or work in this General Aniline firm". (emphasis added) (See also J.A. 1251) Dr. Schaefer attempted

to say in his testimony that these discussions of compensation related to a payment of \$2,000.00 a month and that promises to that effect were made at Paris. It is evident, however, that this is not so. The correspondence between plaintiff and Dr. Schaefer in August, 1960 makes it clear that the question if interim payments was then being broached for the first time. Indeed, plaintiff's letter of August 1, 1960, outlining what he thought the scope of his special interim services might be, was "addressed not to Dr. Schaefer but, rather, to the trustee. (X-137) The trustee, in turn, sent the letter to Dr. Schaefer who responded, in part, as follows:

"Mr. Charles E. Wilson has sent me your letter of August 1, and I had in the meantime the opportunity of discussing this matter with my colleagues of the Executive Committee of the Board.

* * * *

"... I therefore should like to *propose* you, [sic] in agreement with my colleagues of the Executive Committee, for the present period a monthly retainer of \$2,000.-, and to re-examine the situation when our plans have further proceeded." (emphasis added)

(X-151)

It was only at this time that any suggestion or agreement was made or reached for such payments and the amount was only settled pursuant to this correspondence and plaintiff's acceptance letter of September 19, 1960. (X-157) Of course, the most remarkable corroborative fact about all this is that the payments were made only as a *retainer* for Schmitz's cooperation with the trustee and his counsel *after* the beginning of the trusteeship. It is evident from the record that this continuing cooperation with the trustee and his counsel were not contemplated prior to Paris and it was only after the meeting that Dr. Schaefer and his colleagues importuned Schmitz to continue to work with Charles E. Wilson and Charles M. Spofford that the necessity for maintenance funds became clear.

Thus, the discussions in Zurich and Paris admitted by Dr. Schaefer, could only have related to a reward for plaintiff's overall effort. This is particularly evident from the fact that no compensation was ever paid for all of plaintiff's brilliant concept and enormous effort prior to the acceptance of the trusteeship. Therefore, when Schaefer admits promises made at Zurich and Paris he corroborates plaintiff's testimony that these promises related to the bringing into existence of the trusteeship, through which plaintiff would be rewarded. Indeed, the trusteeship agreement, itself, insofar as setting forth the exclusive method of payment of claims, corroborates the promise made to plaintiff.

D. Plaintiff Did Not Alter his Basic Claim for Relief During the District Court Proceedings

1. There is No Conflict Between the Pretrial Statement, Plaintiff's Claims for Relief at Trial and His Principal Brief

At all times in the prosecution of this case plaintiff adhered to certain principal claims for relief. Throughout the case, plaintiff has relied upon his claim of express contract. This express contract not only provided for the payment of a commission, but it also afforded plaintiff an express equitable lien upon the fund arising from the contemplated sale of Interhandel's interest in G.A.F. At all times second string to plaintiff's bow has been his claim for relief based upon implied contract. There is, of course, a technical difference between contracts "implied in fact" and those "implied in law", as appellee points out in its brief. The latter class of implied contract encompasses the idea of "quasi contract", "unjust enrichment", etc. and represents a legal fiction designed to do justice. 1 Williston, *Contracts* § 3A (3rd ed. 1957) Whether a contract is "implied in fact" or "in law" seems to make little difference, however, as the trial judge observed. He pointed out that "these different formula [sic] produce the same results." (J.A. 48)

Thus, where one creates or assists in the creation of a fund under circumstances where the possessor knows or should have known that compensation is expected, the contributor is entitled to an equitable lien upon the fund and there is an implied or quasi contract to compensate the creator from the fund to avoid the unjust enrichment that would result from the beneficiary's retaining it all. See *Roebeling v. Anderson*, 103 U.S. App. D.C. 237, 257 F.2d 615 (1958); 1 Williston, *Contracts* 15 (3rd ed. 1957). The lien attaches to the fund or the *res* itself. There was indeed such a fund within the jurisdiction of the District Court at the time of the filing of this suit. The lien was not enforceable upon the fund at the time it was in the Treasury of the United States because of the interest in it of the United States. If any event, the fund existed without any such strings if only momentarily, during the period between release by the Treasury and its being spirited to Switzerland. This was, of course, done in the utmost secrecy, since only during that period could the lien have been enforced. See *Western Urn Mfg. Co. v. American Pipe & Steel Corp.*, 113 U.S. App. D.C. 378, 308 F. 2d 333 (1962)

2. *Plaintiff's Decision to Dismiss the Second Count of His Complaint was Based Upon Tactical Considerations.*

Defendant seeks to draw some sinister inference from Plaintiff's dismissal of Count II before trial, which was a claim for interim services after the appointment of the trustee. There is nothing very mysterious or significant in it. Plaintiff regarded it as merely an aspect of, and included within, his larger claim based on quasi contract. Although the services performed pursuant to the express contract were fulfilled upon the acceptance of the trusteeship by Charles E. Wilson, the services giving rise to an implied contract for compensation embrace all of plaintiff's services from beginning to end and include forming of the concept of the trusteeship, persuading all parties to agree to it, implementing its details and assisting in its operations to fruition. Although certain interim advancements for ex-

penses which had been promised by defendant were improperly withheld, thus giving rise to a claim for damages for breach of contract, the amount due thereunder was comparatively small and should properly be considered as embraced within the larger and more all-inclusive amount due as an equitable lien under quasi-contract.

Furthermore, since the promise set forth in Count II was for payments of specific amounts at definite times more than three years before filing suit, it may properly have been subject to dismissal as barred by the Statute of Limitations. This defense has been interposed by the defendant. This Count was, therefore, in quite a different posture from Count I for the rights under Count I could not and did not accrue until the fund, the subject of the suit, was available to the defendant. This, of course, did not occur until after the aforementioned period of limitations had run. It, therefore, did not seem worthwhile to the plaintiff to contest this issue. The reasons for this decision would seem obvious, but since defendant appears confused, perhaps this explanation is in order.

E. Interhandel Seeks to Excuse on Grounds of Expediency Its Breach of the Formal Trust Powers and Unjustly Claims Credit for the Settlement Which, In Largest Part, was Brought About by the Efforts of the Trustee

What was the real procuring cause of the settlement between Interhandel and the United States Government? Even defendant's brief does not seriously contend that the long drawn out, interminable law suit that progressed not even glacially in the two year interval between the despondency in the Fall of 1959 and the solution that occurred in late 1961, was a contributing factor. Now the argument seems to be that Dr. Schaefer singlehandedly, by a brilliant *coup*, brought about success. Can this Court be expected to believe anything so unworthy of the late Attorney General Robert F. Kennedy as to think that he would have been swayed by the intervention of a self-styled prince because he happened to be the brother-in-law of his sister-in-law, even if that sister-in-law was the wife of the President?

It is interesting indeed to read the record to try to fathom from the tissue of contradictions that comprise Dr. Schaefer's testimony what in fact did occur. Dr. Schaefer's first trip to the United States certainly had the opposite of a beneficial influence. First, his trip was ill-advised because the new Democratic administration was not yet primed on the case. Secondly, it was also ill-timed because it coincided with the new Administration's first major foreign policy crisis involving the Bay-of-Pigs invasion. (J.A. 350-51, 1278) As if that was not bad enough, he then contrived to insult our government and was asked to leave the Department of Justice. (J.A. 470, 481) His second trip served only to infuriate his own negotiators. (J.A. 361-62, 364-65) and to embarrass the negotiators for the United States government. (J.A. 1115-17, 1160, 1231) His mysterious communication to Mr. Spofford of June 27, 1961, (X-353) which Dr. Schaefer said was intended to convey the idea of the Radziwill intervention (J.A. 1092-94) is, to say the least, less than candid or enlightening. He denied that he had submitted any proposal whatsoever to the Justice Department (J.A. 1119) and said he merely wanted to come to see for himself what the situation was (J.A. 1124) yet he later said that he was coming to see why his proposal had been rejected. (X-365, X-367) He couldn't explain what this proposal might have been. (J.A. 1128) It must have been something submitted by Prince Radziwill although he was not authorized to do so, (J.A. 477, 1112-13, X-489) or something relating to the value of G.A.F. (J.A. 1128) When confronted with the language in his letters he said "proposal" doesn't mean "proposal", but only "suggestion". (J.A. 1113, 1128) This is directly contrary to the testimony of Assistant Attorney General William Orrick who said that Schaefer had made a "cock-eyed" proposal for some kind of European bank. (J.A. 473-74, 494-95)³ Dr. Schaefer testi-

³Orrick's testimony under cross-examination by Interhandel's counsel was as follows:

Q. Mr. Orrick, I don't seem to have any knowledge of this proposal of Dr. Schaefer to contribute money to Europe under certain conditions. Can you be a little more specific? Was this for the displaced

fied that he told Mr. Wilson and Mr. Spofford that he had made no proposal when he saw them the very next day, (J.A. 1132-33) although the trustee testified that Dr. Schaefer acknowledged that a deal had been made. (J.A. 986-987) Dr. Schaefer said he would keep them advised of any negotiations (X-406, X-486, X-1171) but completely failed to do so. (X-406) He had in fact discussed a 50-50 settlement when he met the Attorney General on October 31, 1961, although at trial he denied making such an offer. (J.A. 1164) That an offer of this kind was made is evidenced by his letter of December 4, 1961 to Charles E. Wilson and Charles M. Spofford (X-486) as well as by his exchange of telegrams with the Attorney General in January of 1962. (J.A. 1126-27, 1129, 1132-33, 1133-34, 1136-37, 1172; X-371, X-372, X-373, X-375) He denied that Interhandel's trial attorney, John Wilson, was seeing Assistant Attorney General Orrick,

persons -- you mentioned a European bank. That wasn't going to be a gift to some private enterprise, was it?

A. No. I don't recall the details of it. I believe that it contemplated establishing an independent bank called the European Development Bank, and the funds would be used for, I don't know, some of the lesser-developed countries. As I mentioned earlier, it was, I thought, a cock-eyed scheme and we gave it short shrift in the Department.

Q. Be that as it may, cock-eyed or not cock-eyed, it was altruistic pro bono publico and not selfish or personal, is that right?

A. I don't think so, Mr. Wilson.

Q. When you say you don't think so, you think it was altruism?

A. We couldn't quite -- quite candidly we didn't know how the Swiss were going to get their money out of it, but we thought they were for sure.

Q. Somehow?

A. Yes, so I never characterized it as altruism or pro bono publico or anything of the sort.

Q. At least Dr. Schaefer didn't suggest the money was to be put in his bank, did he?

A. We weren't even too sure about that.

(J.A. 494-95)

(J.A. 1139-40) although counsel saw Mr. Orrick frequently during the Fall of 1961. (J.A. 473, 499-501)

The record makes several things clear. First, that Schaefer and not for the first time, was practicing deception, and this time on Interhandel's duly appointed trustee who had full and irrevocable powers; Second, that a proposition of some absurd kind was made in the summer of 1961 to the Attorney General without the knowledge of Messrs. Charles E. Wilson and Charles M. Spofford; Third, that when Schaefer saw Robert Kennedy and William Orrick in October of 1961, he, to their surprise and pleasure, suggested a sale of G.A.F. and a 50-50 split of the proceeds; and Fourth, that the proposition was immediately accepted in principle and that he has ever since tried to pretend that this agreement was not then reached in order to make it appear that it did not occur during and as a result of the efforts of trustee and counsel.

Can this Court, however, accept a theory that attributes success to sordid intrigue and thus insult the memory of a dedicated Attorney General? Can it believe other than that success is to be attributed to the combination of the careful, lawyerlike preparation and persuasion carried on by that outstanding lawyer, Charles M. Spofford, and the powerful impact of Charles E. Wilson's conviction of the truth and justice of the Swiss cause? Can anyone read the "Trustee's Memorandum" (Pl. Ex. No. 105)⁴ without realizing that this closely-reasoned brief had more effect on the top echelons of the Department of Justice than any personal and family influence? Can it be doubted that such men as President Kennedy and his brother were more influenced by the knowledge that Charles E. Wilson, a distinguished patriot and businessman of international fame, vouched for the Swiss cause and urged settlement in the interest of the United States, than by the mere *ipse dixit* of a quondam Polish Prince?

⁴The "Trustee's Memorandum" is included in the record on appeal but was not reproduced in the joint appendix because of the length of that exhibit.

It, of course, may not be necessary for the plaintiff to prove that successful settlement of the Swiss claim was the finest result of the trusteeship; but the causal connection is manifest. Justice will not permit him to be denied the fruits of his efforts by suggesting that an irrevocable (and in any event unrevoked) contract, of which he was a beneficiary, can be frustrated by the interference with the plenary powers granted to the trustee by one of the parties to the contract.

II

The District Court Had Ample Evidence on Which to Make an Award of Damages

A. Plaintiff's Damages are not Susceptible to the Ordinary Measure of Damages

Defendant in its brief assumes that the value of plaintiff's services are to be measured and proved by the simplistic means available where the question is one of the cost of repairs, replacement or reimbursement. There, witnesses knowledgeable in such matters, are readily available to give dollar and cents figures. Such is the case of *Souza v. Corvick*, ___ U.S. App. D.C. ___, ___ F.2d ___ (No. 22,930, Dec. 10, 1970) on which defendant relies. There a property owner sought to recover damages for "extensive damage to her home and to personal property contained therein". (Slip op., p. 2) The measure of damages as in most of the cases cited by the trial court⁵ was readily ascertainable by reference to expert witnesses who could place an exact figure on the cost of repair or replacement. These standards are obviously not applicable to plaintiff's services. What he did was highly unusual and partook of some, but not all, of the attributes of a finder, conceptor, compactor, and broker. His services were rendered in connection with a matter in litigation and which involved hundreds of millions of dollars as well as the touchy relations of two sov-

⁵Plaintiff disputes the applicability of the other cases cited for other reasons.

ereign governments. These services are not to be measured simply. They transcend precise evaluation infinitely more than do questions of pain and suffering.

B. The Fact of Damages is Undisputed

That plaintiff suffered damages by reason of defendant's refusal to compensate him for his services under either express or implied contract cannot be doubted. Indeed, the trial court found that plaintiff was entitled to recover under implied contract. (J.A. 48) Acting in the expectation of receiving compensation, plaintiff devoted his expertise, time and money to the effectuation of the Wilson trusteeship which the Swiss so greatly desired. (J.A. 975, 984, 1267) Under these circumstances plaintiff suffered not only a detriment but also loss of an opportunity to capitalize upon his comprehension and knowledge of the ramifications of the G.A.F. seizure and the many useful contacts he had made in his long association with this controversy.

C. There is Adequate Evidence of a Promise to Pay a Precise Percentage

Plaintiff devoted a sizeable portion of his principal brief on this appeal to the proof of an express oral contract for compensation in an amount not less than 5% of the proceeds of the contemplated sale of Interhandel's stock in General Aniline and Film Corporation. Should the Court accept plaintiff's arguments and hold that such a contract for compensation was made, the extent of plaintiff's damages can readily be ascertained by reference to the actual settlement entered into by Interhandel or, as plaintiff would prefer, by reference to the settlement which the trusteeship could have obtained in December 1960, but for the refusal of the Swiss at that time to accept anything less than a 100% recovery of their vested property or its counter-value.

D. Plaintiff has Proved Measurable Damages Under Implied Contract

Should this Court reject plaintiff's evidence that there was a valid oral agreement, plaintiff nonetheless is entitled to recover under an implied contract for the reasonable value of his services. The record on appeal contains many indicia of this value and these matters have been discussed at pages 45 through 47 in plaintiff's principal brief on this appeal. That such indicators may serve as the basis for an award of damages in a case of this type is established by *Palmer v. Connecticut Railway & Lighting Company*, 311 U.S. 544 (1941). See also *City of Kennett v. Katz Const. Co.*, 273 Mo. 279, 202 S.W. 558 (1918), cited in plaintiff's main brief at page 43.

The *Palmer* case involved the assessment of damages in a case where there was the breach of a 999 year lease. Various measures of damage were proposed by the lessors but rejected because of uncertainty by the District Court which felt that expert testimony and evidence of certain surveys ought to have been presented at trial. The District Court was overruled by the Circuit Court of Appeals, and the latter court's decision was affirmed by the U.S. Supreme Court. In its affirming opinion the Supreme Court declared that the evidence of estimated future loss of income was adequate under the circumstances of that particular case because such evidence afforded "a reasonable basis for a conclusion" 311 U.S. at 559. The Supreme Court disposed of respondent's claim that inadequate evidence was presented by declaring, "The failure to produce further evidence, either through experts or transportation surveys, was not fatal . . . even though such evidence is admissible".

The holding in *Palmer* reflected, of course, the basic rule that there must be certainty as to the fact of damages. That was not a problem in *Palmer* and it is not an issue here. What is involved in the instant appeal is whether or

not plaintiff should be denied recovery because the peculiar facts make an exact evaluation difficult. That damages are not to be denied under such circumstances is made clear in the early Michigan case of *Allison v. Chandler*, 11 Mich. 542, cited with approval by *Story Parchment Co. v. Paterson Parchment Paper Co.*, 282 U.S. 555 (1931). The Michigan Court declared:

"Juries are allowed to act upon probable and inferential, as well as direct and positive proof. And when, from the nature of the case, the amount of the damages cannot be estimated with certainty, or only a part of them can be so estimated, we can see no objection to placing before the jury all the facts and circumstances of the case, having any tendency to show damages, or their probable amount; so as to enable them to make the most intelligible and probable estimate which the nature of the case will permit".

11 Mich. at 555-56

Although *Story Parchment* involved the factor of the difficulty of ascertainment of the amount of damages because of the wrongdoing of the defendant, as plaintiff urges is the case here, this is not a necessary element of the principle as enunciated in *Allison* and approved by the Supreme Court. In *Allison*, difficulties of proof because of wrongdoing by the defendant was not involved. See also the more recent cases of *Concrete Specialties v. H. C. Smith Const. Co.*, 423 F.2d 670

(10th Cir. 1970) and *Electronic & Missile Facilities Inc. v. U.S.*, 416 F.2d 1345, 189 Ct. Cl. 237 (1969).

E. The Trial Court Could and Should Have Determined the Amount of Damages

The indicators cited by plaintiff in his main brief are sufficient to enable the Court to make such reasonable and probable estimate of the value of plaintiff's services to the Swiss as, in its judgment, will produce adequate compensation. The facts and circumstances of plaintiff's case are such that no direct evidence of value is required. If any were required, the best informed expert would surely be Charles E. Wilson, whose Affidavit (J.A. 77) shows what he could testify to. It would really be inappropriate to demand more expert testimony on the point. Such additional expert testimony would be from a management consultant, investment banker or international lawyer who would have to study all of the testimony and exhibits and then put a dollar value on plaintiff's services. Would it not be unreasonable to expect plaintiff to go to the great expense involved in producing such witnesses when the trier of facts is eminently qualified to do this very thing? Why should an experienced District Court judge who has heard every word of testimony and had the opportunity to scrutinize every scrap of written evidence be less qualified to make an evaluation than an expert witness? The difficulties are not such that he should be unable to resolve them. If he needed expert testimony he could have, before or after the close of the trial, questioned Charles E. Wilson on this point. Is he not infinitely better able to put a dollar figure on the value of plaintiff's services on the facts he has than is a jury to measure pain and suffering? Additional evidence of the value of the trusteeship idea, the value of the trusteeship to the Swiss, and its role in the ultimate settlement of the case is possible, but plaintiff submits that said additional evidence is not necessary.

F. Interhandel's Breach of the Trusteeship Agreement Made Proof of Damages Difficult

Interhandel by its breach of the trust agreement has made difficult the ascertainment of the precise value of plaintiff's services. By going over the head of its trustee, in spite of his exclusive agency to act on its behalf, Interhandel sought to undermine and destroy the value of the whole trusteeship concept which plaintiff had conceived and implemented. By intervening directly with the United States Government and by disrupting the orderly progress of the trustee's work and preventing the anticipated results of those activities, the Swiss converted the basis for plaintiff's claim from a settlement actually obtained by the trustee into one to which he was not privy. By freezing the trustee out of the final settlement negotiations, defendant prevented plaintiff from obtaining the knowledge that would have established the proximate connection of plaintiff's endeavors to the ultimate settlement. The breach of Interhandel thus prevented plaintiff from presenting evidence of the value of the trusteeship which was definite and certain, and required him, instead, to rely upon evidence of value based upon presumption and inference.

III

PLAINTIFF'S EFFORTS MATERIALLY AIDED THE CREATION OF THE FUND AND INTERHANDEL'S FAILURE TO COMPENSATE HIM PRODUCED AN UN- JUST ENRICHMENT OF INTERHANDEL

Plaintiff concurs with defendant's statement that it was incumbent upon him to prove that the retention of all of the settlement fund by Interhandel constituted unjust enrichment. (Br. p. 44) Plaintiff disagrees, however, with defendant's subsequent statement that there was no unjust enrichment as a result of the settlement. The failure of the Swiss to compensate the plaintiff for his services in creating the settlement fund deprived plaintiff of a recovery and to that extent unjustly enriched Interhandel.

On a claim of unjust enrichment the complainant must not only show that the other party received a benefit but

also that it was at the expense of the complainant. *Lawrence Warehouse Co. v. Twohig*, 224 F.2d 493 (8th Cir. 1955) The record on appeal demonstrates that plaintiff was strongly encouraged by defendant to expend his time and effort on its behalf and to afford it the benefit of his expertise. Since the trusteeship which plaintiff established and aided contributed materially to the ultimate settlement made by Interhandel with the United States Government, (see p. 17, *supra*) defendant, in justice and equity, is required to compensate plaintiff adequately for his effort on its behalf. Defendant's brief relies solely upon the finding of the trial court that the trusteeship failed to contribute to the ultimate settlement. This finding is not binding upon plaintiff and, as previously demonstrated, is erroneous. The recitation of the facts of this case in plaintiff's principal brief on appeal and a review of the testimony and exhibits presented at trial confirm plaintiff's contention that the trusteeship which he created and promoted materially aided in the settlement of the long-standing Interhandel controversy.

IV

NO PART OF PLAINTIFF'S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS

The trial court herein determined that the statute of limitations was not applicable to any aspect of plaintiff's claim. (J.A. 31) Defendant did not appeal so that this conclusion must be accepted by this Court.

V

IN THE INTEREST OF DOING JUSTICE THE TRIAL COURT OUGHT TO HAVE GRANTED PLAINTIFF'S MOTION FOR RECONSIDERATION OR TO REOPEN THE JUDGMENT TO TAKE ADDITIONAL TESTIMONY

As previously noted, plaintiff's services were unique and did not fall into any single recognized category for purposes of comparison or proof of value. Accordingly, he did not present direct evidence of value but rather evidence indica-

tive of the value of his services. He believed that evidence of the value of the trusteeship, indeed the value of obtaining Charles E. Wilson's acceptance of the trust powers, demonstrated value amply sufficient to enable the Court to make a "fair and reasonable approximation of the worth of his services". Cf. *Electronic & Missile Facilities, Inc. v. U.S.*, 416 F.2d 1345, 1358, 189 Ct. Cl. 237 (1969).

Rule 59(a) does not expressly require a showing of the precise evidence that would be presented if the judgment were reopened. Although such a showing is desirable the motion ought not to be denied if good reason otherwise exists for granting the relief sought. Plaintiff submits that the tender made here was adequate in the circumstances. The evidence the District Court sought required research and was expensive to obtain. The case cited by appellee, *Knight v. Hersh*, 114 U.S. App. D.C. 198, 313 F.2d 879 (1963), involves Rule 60 rather than Rule 59 and is, therefore, not controlling authority. Cases such as *duPont v. U.S.*, 385 F.2d 780 (3rd Cir. 1967) and *Halper v. Browning, King & Co.*, 117 U.S. App. D.C. 71, 325 F.2d 644 (1963), which stress interests of fairness and justice, are much more appropriate a consideration of this issue.

CONCLUSION

The total effect of defendant's brief is one of niggling criticism, petty fault finding and an attempt to exploit minor or imaginary discrepancies in plaintiff's case. It is strewn with errors in its attempt to lay out a factual basis of defense which cannot accept the trial Court's findings but must rely on its own concoction.

It completely fails to refute or even come to grips with the hard core of plaintiff's case that has stood up to all frontal attacks as well as to snide denigration. His case is only the more brightly burnished by these attacks. The more closely the record is scrutinized, the more evident it becomes that it was plaintiff's concept of a trusteeship that rescued the Interhandel cause from an almost hopeless position and

by the implementation thereof made possible its prompt and satisfactory settlement. The solution was of enormous value to the Swiss and fully justified plaintiff's claim for compensation.

Respectfully submitted,

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